Wexton	Wilson (FL)	Womack
Wild	Wilson (SC)	Yarmuth
Williams (GA)	Wittman	Young

NAYS—103

Allen	Franklin, C. Scott	Mast
Arrington	Fulcher	McClintock
Babin	Gaetz	Miller (IL)
Baird	Gohmert	Miller (WV)
Banks	Good (VA)	Mooney
Biggs	Gooden (TX)	Moore (AL)
Bishop (NC)	Gosar	Nehls
Boebert	Green (TN)	Norman
Brady	Greene (GA)	Nunes
Brooks	Griffith	Owens
Buck	Grothman	Palazzo
Budd	Guest	Palmer
Burgess	Hagedorn	Pence
Cammack	Harris	Perry
Carl	Harshbarger	Pfluger
Carter (GA)	Hern	Posey
Carter (TX)	Herrell	Rose
Cline	Hice (GA)	Rosendale
Cloud	Hudson	Roy
Clyde	Huizenga	Rutherford
Cole	Jackson	Schweikert
Crawford	Jordan	Scott, Austin
Curtis	Joyce (PA)	Smith (MO)
Davidson	Kelly (MS)	Steil
DesJarlais	Kustoff	Steube
Donalds	LaMalfa	Stewart
Duncan	Lamborn	Taylor
Estes	Latta	Tiffany
Fallon	LaTurner	Timmons
Ferguson	Lesko	Waltz
Fischbach	Loudermilk	Weber (TX)
Fitzgerald	Mace	Wenstrup
Fleischmann	Mann	Westerman
Foxx	Massie	Williams (TX)
		Zeldin

NOT VOTING—2

Burchett	Case

□ 1444

Mr. WESTERMAN changed his vote from ''yea'' to ''nay.''

Messrs. MULLIN, ARMSTRONG, and PASCRELL changed their vote from ''nay'' to ''yea.''

So (two-thirds being in the affirmative) the rules were suspended and the bills were passed.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

MEMBERS RECORDED PURSUANT TO HOUSE RESOLUTION 8, 117TH CONGRESS

Aderholt (Moolenaar)	Kelly (IL) (Jeffries)	Napolitano (Correa)
Amodei (Balderson)	Kirkpatrick (Stanton)	Pappas (Kuster)
DeFazio (Davids (KS))	Lawson (FL) (Evans)	Payne (Pallone)
DeSaulnier (Matsui)	Leger Fernandez (Jacobs (CA))	Ruiz (Aguilar)
García (IL) (Garcia (TX))	Lieu (Beyer)	Rush (Underwood)
Hoyer (Brown)	Lowenthal (Beyer)	Sewell (DelBene)
Johnson (TX) (Jeffries)	Meng (Clark (MA))	Vela (Gomez)
	Mullin (Cole)	Velázquez (Jeffries)
		Wilson (FL) (Hayes)

PROTECTING OLDER WORKERS AGAINST DISCRIMINATION ACT OF 2021

Mr. SCOTT of Virginia. Mr. Speaker, pursuant to House Resolution 486, I call up the bill (H.R. 2062) to amend the Age Discrimination in Employment Act of 1967 and other laws to clarify appropriate standards for Federal employment discrimination and retaliation claims, and for other purposes, and ask for its immediate consideration.

The Clerk read the title of the bill.

The SPEAKER pro tempore. Pursuant to House Resolution 486, in lieu of the amendment in the nature of a substitute recommended by the Committee on Education and Labor printed in the bill, an amendment in the nature of a substitute consisting of the text of Rules Committee Print 117–6, modified by the amendment printed in part A of House Report 117–71, is adopted and the bill, as amended, is considered read.

The text of the bill, as amended, is as follows:

H.R. 2062

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Protecting Older Workers Against Discrimination Act of 2021''.

SEC. 2. STANDARDS OF PROOF.

(a) AGE DISCRIMINATION IN EMPLOYMENT ACT OF 1967.—

(1) CLARIFYING PROHIBITION AGAINST IMPERMISSIBLE CONSIDERATION OF AGE IN EMPLOYMENT PRACTICES.—Section 4 of the Age Discrimination in Employment Act of 1967 (29 U.S.C. 623) is amended by inserting after subsection (f) the following:

''(g)(1) Except as otherwise provided in this Act, an unlawful practice is established under this Act when the complaining party demonstrates that age or an activity protected by subsection (d) was a motivating factor for any practice, even though other factors also motivated the practice.

''(2) In establishing an unlawful practice under this Act, including under paragraph (1) or by any other method of proof, a complaining party—

''(A) may rely on any type or form of admissible evidence; and

''(B) shall not be required to demonstrate that age or an activity protected by subsection (d) was the sole cause of a practice.''.

(2) REMEDIES.—Section 7 of such Act (29 U.S.C. 626) is amended—

(A) in subsection (b)—

(i) in the first sentence, by striking ''The'' and inserting ''(1) The'';

(ii) in the third sentence, by striking ''Amounts'' and inserting the following:

''(2) Amounts'';

(iii) in the fifth sentence, by striking ''Before'' and inserting the following:

''(4) Before''; and

(iv) by inserting before paragraph (4), as designated by clause (iii) of this subparagraph, the following:

''(3) On a claim in which an individual demonstrates that age was a motivating factor for any employment practice under section 4(g)(1), and a respondent demonstrates that the respondent would have taken the same action in the absence of the impermissible motivating factor, the court—

''(A) may grant declaratory relief, injunctive relief (except as provided in subparagraph (B)), and attorney's fees and costs demonstrated to be directly attributable only to the pursuit of a claim under section 4(g)(1); and

''(B) shall not award damages or issue an order requiring any admission, reinstatement, hiring, promotion, or payment.''; and

(B) in subsection (c)(1), by striking ''Any'' and inserting ''Subject to subsection (b)(3), any''.

(3) DEFINITIONS.—Section 11 of such Act (29 U.S.C. 630) is amended by adding at the end the following:

''(m) The term 'demonstrates' means meets the burdens of production and persuasion.''.

(4) FEDERAL EMPLOYEES.—Section 15 of such Act (29 U.S.C. 633a) is amended by adding at the end the following:

''(h) Sections 4(g) and 7(b)(3) shall apply to mixed motive claims (involving practices described in section 4(g)(1)) under this section.''.

(b) TITLE VII OF THE CIVIL RIGHTS ACT OF 1964.—

(1) CLARIFYING PROHIBITION AGAINST IMPERMISSIBLE CONSIDERATION OF RACE, COLOR, RELIGION, SEX, OR NATIONAL ORIGIN IN EMPLOYMENT PRACTICES.—Section 703 of the Civil Rights Act of 1964 (42 U.S.C. 2000e–2) is amended by striking subsection (m) and inserting the following:

''(m) Except as otherwise provided in this title, an unlawful employment practice is established when the complaining party demonstrates that race, color, religion, sex, national origin, or an activity protected by section 704(a) was a motivating factor for any employment practice, even though other factors also motivated the practice.''.

(2) FEDERAL EMPLOYEES.—Section 717 of such Act (42 U.S.C. 2000e–16) is amended by adding at the end the following:

''(g) Sections 703(m) and 706(g)(2)(B) shall apply to mixed motive cases (involving practices described in section 703(m)) under this section.''.

(c) AMERICANS WITH DISABILITIES ACT OF 1990.—

(1) DEFINITIONS.—Section 101 of the Americans with Disabilities Act of 1990 (42 U.S.C. 12111) is amended by adding at the end the following:

''(11) DEMONSTRATES.—The term 'demonstrates' means meets the burdens of production and persuasion.''.

(2) CLARIFYING PROHIBITION AGAINST IMPERMISSIBLE CONSIDERATION OF DISABILITY IN EMPLOYMENT PRACTICES.—Section 102 of such Act (42 U.S.C. 12112) is amended by adding at the end the following:

''(e) PROOF.—

''(1) ESTABLISHMENT.—Except as otherwise provided in this Act, a discriminatory practice is established under this Act when the complaining party demonstrates that disability or an activity protected by subsection (a) or (b) of section 503 was a motivating factor for any employment practice, even though other factors also motivated the practice.

''(2) DEMONSTRATION.—In establishing a discriminatory practice under paragraph (1) or by any other method of proof, a complaining party—

''(A) may rely on any type or form of admissible evidence; and

''(B) shall not be required to demonstrate that disability or an activity protected by subsection (a) or (b) of section 503 was the sole cause of an employment practice.''.

(3) CERTAIN ANTI-RETALIATION CLAIMS.—Section 503(c) of such Act (42 U.S.C. 12203(c)) is amended—

(A) by striking ''The remedies'' and inserting the following:

''(1) IN GENERAL.—Except as provided in paragraph (2), the remedies''; and

(B) by adding at the end the following:

''(2) CERTAIN ANTI-RETALIATION CLAIMS.—Section 107(c) shall apply to claims under section 102(e)(1) with respect to title I.''.

(4) REMEDIES.—Section 107 of such Act (42 U.S.C. 12117) is amended by adding at the end the following:

''(c) DISCRIMINATORY MOTIVATING FACTOR.—On a claim in which an individual demonstrates that disability was a motivating factor for any employment practice under section 102(e)(1), and a respondent demonstrates that the respondent would have taken the same action in the absence of the impermissible motivating factor, the court—

''(1) may grant declaratory relief, injunctive relief (except as provided in paragraph (2)), and attorney's fees and costs demonstrated to be directly attributable only to the pursuit of a claim under section 102(e)(1); and

''(2) shall not award damages or issue an order requiring any admission, reinstatement, hiring, promotion, or payment.''.

(d) REHABILITATION ACT OF 1973.—

(1) IN GENERAL.—Sections 501(f), 503(d), and 504(d) of the Rehabilitation Act of 1973 (29 U.S.C. 791(f), 793(d), and 794(d)), are each amended by adding after ''title I of the Americans with Disabilities Act of 1990 (42 U.S.C. 12111 et seq.)'' the following: '', including the standards of causation or methods of proof applied under section 102(e) of that Act (42 U.S.C. 12112(e)),''.

(2) FEDERAL EMPLOYEES.—The amendment made by paragraph (1) to section 501(f) of the Rehabilitation Act of 1973 (29 U.S.C. 791(f)) shall be construed to apply to all employees covered by section 501 of that Act (29 U.S.C. 791).

SEC. 3. APPLICATION.

This Act, and the amendments made by this Act, shall apply to all claims pending on or after the date of enactment of this Act.

SEC. 4. SEVERABILITY.

If any provision of this Act, an amendment made by this Act, or the application of such provision or amendment to any person or circumstance is held to be unconstitutional, the remainder of this Act, the amendments made by this Act, and the application of the provisions of such to any person or circumstance shall not be affected thereby.

The SPEAKER pro tempore. The bill, as amended, shall be debatable for 1 hour equally divided and controlled by the chair and ranking minority member of the Committee on Education and Labor or their respective designees.

The gentleman from Virginia (Mr. SCOTT) and the gentlewoman from North Carolina (Ms. FOXX) each will control 30 minutes.

The Chair recognizes the gentleman from Virginia.

GENERAL LEAVE

Mr. SCOTT of Virginia. Mr. Speaker, I ask unanimous consent that all Members have 5 legislative days in which to revise and extend their remarks and insert extraneous material on H.R. 2062, the Protecting Older Workers Against Discrimination Act of 2021.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Virginia?

There was no objection.

Mr. SCOTT of Virginia. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I rise in support of H.R. 2062, the Protecting Older Workers Against Discrimination Act, which I reintroduced this year with our colleague, the gentleman from Illinois (Mr. RODNEY DAVIS).

For decades, the Federal Government has recognized the need to protect older workers against discrimination on the basis of age. Unfortunately, in 2009, the Supreme Court severely eroded protections for older workers in the case of Gross v. FBL Financial Services, Inc.

In its decision, the Court set a significantly higher burden of proof for workers alleging age discrimination. Under this standard, workers must prove that age discrimination was the decisive cause of an employer's action rather than just one of the motivating factors, as was the case before the Gross decision.

Mr. Speaker, I include in the RECORD a letter from the NAACP supporting the bill and discussing the Gross decision.

NAACP,
Washington, DC, June 19, 2021.

Re NAACP Support for H.R. 2062, the Protecting Older Workers Against Discrimination Act of 2021 (POWADA) Urges a ''Yea' Vote on Final Passage.

Hon. ROBERT (BOBBY) SCOTT,
House of Representatives,
Washington, DC.

DEAR REPRESENTATIVE SCOTT: On behalf of the National Association for the Advancement of Colored People (NAACP), our nation's oldest, largest and most widely recognized grassroots based civil rights organization, I thank you for your leadership and work for the passage of H.R. 2062, the Protecting Older Workers Against Discrimination Act of 2021 (POWADA). This bill is a crucial component of the NAACP's vision for ensuring a society in which all individuals have equal rights and equal protection under the law as a key measure to ensure that illegal workplace discrimination is ended for all. To that end, we are convinced that POWADA takes a critical steps forward to ensure older workers, especially those who are persons of color and women, are protected from age discrimination in the workplace.

The Supreme Court's 2009 decision *Gross v. FBL Financial Services, Inc.*, significantly reduced the ability for employees to challenge an employer's age discriminatory employment practices in court. The decision forces employees to prove that age is a 'but-for' cause of an age discrimination employment action. Worse, some circuit courts extended the *Gross* but-for standard into other civil rights statutes as well. The NAACP urges full Congressional support for, and passage of POWADA, a bill that restores the ability of plaintiffs to challenge age and other forms of discrimination in court by returning the Age Discrimination in Employment Act, the Americans with Disabilities Act, the Rehabilitation Act of 1973 and the retaliation provisions of Title VII to the mixed-motive standard of proof used under Title VII of the Civil Rights Act for decades.

The importance of countering age discrimination cannot be understated, especially since age discrimination often intersects with other forms of discrimination based on race and gender. The evidence for this is clear: Nearly two-thirds of women and more than three-fourths of African American workers age 45 and older say they've seen or experienced age discrimination in the workplace. Over 9 percent of African Americans felt pressured into early retirement because of their age, compared to 6.7 percent for other races. During the COVID–19 pandemic, the decline in employment for older African American, Hispanic, and Asian worker was twice that of older white workers. The ability for workers to confront age discrimination is an integral part of confronting discrimination generally in our Country.

For the preceding reasons, the NAACP strongly urges Congress to pass POWADA (H.R. 2062) and protect our nation's older workers as soon as possible.

Thank you again for your leadership and attention to this crucial issue of civil rights and equal protection under law. If you have any questions or other concerns with the NAACP's position on this matter, please do not hesitate to contact me.

Sincerely,

HILARY O. SHELTON,
Director, NAACP Washington Bureau & Senior Vice President for Policy and Advocacy.

Mr. SCOTT of Virginia. Mr. Speaker, making cases more difficult to prove contradicts our responsibility to support older workers who have been vulnerable to workplace discrimination. In fact, more than half of older workers are pushed out of longtime jobs before they choose to retire.

Age discrimination also holds back our economy. Research by AARP and the Economist Intelligence Unit found that, absent age discrimination, older workers would have contributed $850 billion more in 2018 to the gross domestic product. Clearly, our labor market and economy cannot fully recover from the pandemic if we fail to support our older workers.

The Protecting Older Workers Against Discrimination Act is a bipartisan initiative that would restore the pre-2009 evidentiary standard for age discrimination claims. This would effectively realign the burden of proof for age discrimination claims so it would again be the same standard that is required for proving discrimination based on sex, race, religion, and national origin.

This legislation also reinstates this standard for disability discrimination claims under the Americans with Disabilities Act and the Rehabilitation Act, as well as claims for retaliation for rights protected under the Civil Rights Act of 1964. These statutes have all been implicated by the Gross decision.

Last Congress, 261 bipartisan House Members voted in favor of passing the Protecting Older Workers Against Discrimination Act. This Congress, I hope we can come together again and take this next step to ensure that older workers can achieve justice.

Mr. Speaker, I include in the RECORD a Statement of Administration Policy in support of H.R. 2062.

STATEMENT OF ADMINISTRATION POLICY

H.R. 2062—PROTECTING OLDER WORKERS AGAINST DISCRIMINATION ACT—REP. SCOTT, D–VA, AND 112 COSPONSORS

The Administration supports House passage of the Protecting Older Workers Against Discrimination Act (POWADA). The bipartisan legislation would restore legal protections for older Americans and hold employers accountable for age discrimination.

The bill amends the Age Discrimination in Employment Act (ADEA), Title VII of the Civil Rights Act of 1964, the Americans with Disabilities Act (ADA), and the Rehabilitation Act of 1973, to replace the ''but-for'' test established in Gross v. FBL Financial Services, Inc. with the ''motivating factor'' test. The bill thereby aligns the burden of proof for age discrimination with similar standards for proving discrimination based on race and national origin. In addition, the bill allows individuals claiming discrimination to rely on any type or form of admissible evidence to prove an unlawful practice occurred.

Workplace discrimination prevents people from fully accessing the American dream and limits the contributions that they can make to our shared prosperity. Ending it is a priority for the Administration. The President supports this bipartisan legislation that protects workers from age discrimination.

Mr. SCOTT of Virginia. Mr. Speaker, I reserve the balance of my time.

Ms. FOXX. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I rise today in opposition to H.R. 2062, the Protecting Older Workers Against Discrimination Act.

Every worker—every worker—including older Americans should have the law on their side to protect them from workplace discrimination. The good news is that existing Federal statutes already prohibit workplace discrimination.

Despite what Democrats might have you believe, Mr. Speaker, there are a number of laws protecting Americans of all ages against discrimination in the workplace. The Civil Rights Act of 1964, CRA; the Age Discrimination in Employment Act of 1967, ADEA; the Rehabilitation Act of 1973, Rehab Act; and the Americans with Disabilities Act of 1990, ADA, make employment discrimination based on an individual's race, color, religion, sex, national origin, age, or disability unlawful.

My Republican colleagues and I appreciate the stated purpose behind H.R. 2062. Age discrimination is wrong, but the bill before us today is fundamentally flawed and a classic example of a solution in search of a problem.

Age discrimination in the workplace is already illegal. Mr. Speaker, I am going to say that over and over and over today. Age discrimination in the workplace is already illegal.

There is no evidence indicating this bill is necessary. The committee's cursory examination of the bill earlier this year failed to uncover any suggestion that workers have been discouraged from filing discrimination or retaliation charges with the Equal Employment Opportunity Commission, EEOC, the primary agency that enforces Federal laws that make it illegal to discriminate.

Over the last couple of decades, rates of age discrimination charges, a signed statement asserting employment discrimination, filed with the EEOC have remained steady. Additionally, the available data from the Bureau of Labor Statistics show unemployment trends for older workers are heading in a positive direction.

In 2018, older Americans earned 7 percent more than the median for all workers, a large increase from 20 years ago. For workers age 65 and older, employment tripled from 1988 to 2018, while employment among younger workers grew by about one-third. Likewise, over the past 20 years, the number of older workers on full-time work schedules grew 2½ times faster than the number working part-time.

The legislation we are debating today is another sweeping one-size-fits-all scheme. This ill-advised bill rewards Democrats' favored political friends, disregards real-world workplace experience, and rejects decades of Supreme Court precedent.

Our Nation's uncertain economic times demand pro-growth and pro-worker policies, but House Democrats would rather consider misguided proposals such as H.R. 2062. The Protecting Older Workers Against Discrimination Act stifles job creation and harms small businesses and aging workers at a time when our languishing post-pandemic economy most needs their contributions.

Mr. Speaker, this legislation enriches trial lawyers, not plaintiffs. H.R. 2062 overturns Supreme Court precedent by allowing the plaintiffs to argue that age was only a motivating, not decisive, factor that led to an employer's unfavorable employment action. It allows these kinds of mixed-motive claims across four completely different nondiscrimination laws.

H.R. 2062 also allows mixed-motive claims where the plaintiff alleges the employer has taken action against a plaintiff because of a prior complaint of discrimination. Allowing mixed-motive claims in cases alleging retaliation puts employers in the impossible position of trying to prove that a legitimate employment decision was not in response to a prior complaint.

The only party that will be paid in nearly all mixed-motive cases is the plaintiff's attorneys. We know this will happen because, under the legislation, employers will be able to demonstrate that they would have taken the same action in the absence of the impermissible motivating factors.

Simply put, Mr. Speaker, older Americans, the very people this legislation is purported to help, will in the vast majority of cases receive no monetary damages or other redress under H.R. 2062.

H.R. 2062 also increases frivolous legal claims against business owners. Job creators will spend valuable time and resources battling these undeserving claims, as the Supreme Court pointed out in the 2013 Nassar case. These same resources could be better used to prevent workplace harassment and discrimination.

When H.R. 2062 was considered by the Education and Labor Committee, Republicans offered amendments to address fundamental flaws in H.R. 2062.

We offered an amendment to strike the ill-advised and unworkable provisions allowing for mixed-motive retaliation claims.

We proposed collecting data and evidence to understand how age discrimination and retaliation charges and lawsuits have changed because of Supreme Court rulings.

We attempted to make sure the public understands that even successful plaintiffs under the bill will likely not receive any monetary damages while their lawyers will be paid.

We proposed a noncontroversial clarification to maintain protections for workers with disabilities.

And we tried to clarify the evidentiary standard for proving a claim under the bill.

□ 1500

Unfortunately, our commonsense amendments were defeated by Democrats along party lines.

Mr. Speaker, all workers should be protected from workplace discrimination, and they already are under current law.

H.R. 2062 is a distraction from the real problems plaguing our Nation, like the crisis at the border, over 9 million jobs begging for qualified workers, unaffordable college costs, and runaway economic inflation.

I encourage my colleagues to vote ''no'' on H.R. 2062, and I reserve the balance of my time.

Mr. SCOTT of Virginia. Mr. Speaker, I yield 2 minutes to the gentlewoman from Illinois (Ms. SCHAKOWSKY), the co-chair of the House Democratic Caucus Task Force on Aging.

Ms. SCHAKOWSKY. Mr. Speaker, I thank my leader here who has done such a great job to protect workers.

We are here today to fix a terrible 2009 Supreme Court decision that weakened protections against age discrimination under the Age Discrimination in Employment Act.

A 2020 AARP survey found that three in five workers age 45—yes, age 45 and older—had seen or experienced age discrimination in the workplace. So, there is absolutely evidence that this exists. It is real, and we need to do something to fix it.

Meanwhile, Americans are working more and longer than they ever have. Workers deserve strong workplace protections throughout their entire careers, full stop.

I am absolutely proudly and enthusiastically looking forward to voting ''yes'' on H.R. 2062, the Protecting Older Workers Against Discrimination Act, to ensure that older workers can hold employers accountable for age discrimination.

When asking workers, ''Have you ever experienced any kind of discrimination based on age?'' and when the answer is three out of five say yes, beginning at age 45, I trust that this is true. This was in a survey that was done by the AARP, which has millions of members, that told us that. So, the current laws that were cited across the aisle are not doing the job that needs to be done right now to protect our older workers.

Let's pass this bill today.

Ms. FOXX. Mr. Speaker, I yield 2 minutes to the gentlewoman from Illinois (Mrs. MILLER).

Mrs. MILLER of Illinois. Mr. Speaker, I thank Dr. FOXX for her leadership.

Every small business has its own unique characteristics and challenges, and that is a good thing. Having diversity of business structures and operations is what makes America productive and competitive. The Federal Government should move with caution when they pass legislation which puts every detail and decision of American businesses under overbearing rules and regulations.

There are already laws in effect which prevent employers from discriminating against older Americans. As it should be, age discrimination in the workplace is illegal.

I oppose H.R. 2062 because there has not been thoughtful deliberation with the real Americans involved. The proponents of this bill have not provided the Members of this body with data and evidence which shows that the regulatory changes in this bill are needed or even wanted.

The legislation before us today represents big wins for the Democrats' special interests—namely, trial lawyers, not working-class America.

Our land is the land of opportunity because everyone from all ages and walks of life has the chance to participate and prosper, and thankfully, they are protected by law against discrimination. Rather than successfully addressing real-world problems, this bill will only enrich Democrats' political allies.

I strongly urge a ''no'' vote on this bill.

Mr. SCOTT of Virginia. Mr. Speaker, I yield 2½ minutes to the gentlewoman from Oregon (Ms. BONAMICI), chair of the Subcommittee on Civil Rights and Human Services.

Ms. BONAMICI. Mr. Speaker, I thank Chairman SCOTT for yielding and for his leadership on this important legislation. I rise in strong support of the bipartisan Protecting Older Workers Against Discrimination Act.

My home State of Oregon has one of the most rapidly aging populations in the country, and I have heard from many workers, particularly those in the technology industry, who believe they have been dismissed or denied employment because of their age. In fact, 6 in 10 older workers say they have experienced age discrimination, and 90 percent say that it is common.

My office has helped older workers who have filed age discrimination complaints before the Equal Employment Opportunity Commission, but the burden of proof is very high and often results in uncertain outcomes.

Congress recognized the need to protect older workers from pervasive age discrimination when it enacted the Age Discrimination in Employment Act of 1967. But decades later, in 2009, the Supreme Court, in Gross v. FBL Financial Services, imposed a much higher burden of proof for workers to prove age discrimination under the ADEA. Because of the Court's holding in Gross, workers now must prove that age discrimination was the decisive cause for their employer's adverse action rather than just a motivating factor in their employer's adverse action.

Mr. Speaker, earlier this year, I joined Chairman SCOTT in reintroducing the bipartisan Protecting Older Workers Against Discrimination Act. This needed bill is a commonsense legislative fix that will simply restore the pre-2009 standard in age discrimination claims and, importantly, align the burden of proof with the same standards for proving discrimination in other areas, such as those based on sex, race, religion, and national origin.

As we discussed during the joint Civil Rights and Human Services Subcommittee and Workforce Protections Subcommittee hearing earlier this year, Americans are living longer and working longer. We must make sure they are protected from age discrimination.

Mr. Speaker, I include in the RECORD a letter from the Leadership Council of Aging Organizations in support of the Protecting Older Workers Against Discrimination Act.

LEADERSHIP COUNCIL OF
AGING ORGANIZATIONS,
May 13, 2021.

DEAR MEMBER OF CONGRESS: The Leadership Council of Aging Organizations (LCAO) is a coalition of 69 national nonprofit organizations concerned with the well-being of America's older population and committed to representing their interests in the policymaking arena. We are writing to urge you to vote for passage of the Protecting Older Workers Against Discrimination Act (POWADA, H.R. 2062, S. 880). POWADA is bipartisan and bicameral legislation introduced in the House by Representatives Bobby Scott (D–VA) and Rodney Davis (R–IL). In the Senate, the bill is sponsored by Senators Bob Casey (D–PA), Chuck Grassley (R–IA), Patrick Leahy (D–VT) and Susan Collins (R–ME).

Age discrimination is pervasive and stubbornly entrenched. It often starts in the hiring process when employers circumvent anti-age discrimination laws by using such tactics as setting a maximum number of years of experience that a prospective employer will consider. Whether it starts at the hiring process or not, six in 10 older workers say they have experienced age discrimination and 90 percent of them say it is common. It is even more pervasive among older women and African American workers—nearly two thirds of women and three-fourths of African Americans say they have seen or experienced workplace discrimination. The COVID–19 pandemic has wreaked havoc on employment for everyone, with older workers taking a harder hit. Older workers experienced a 1.1 percent higher unemployment rate from April through September of 2020 than their mid-career counterparts (9.7 percent were unemployed versus 8.6 percent). The rates were worse for older workers who were black, female, or who did not have a college degree.

Courts have not taken age discrimination as seriously as other forms of discrimination and older workers have fewer protections as a result. Over ten years ago, the Supreme Court decision in Gross v. FBL Financial Services Inc. (2009), set a higher standard of proof for age discrimination than previously applied, and much higher than for other forms of discrimination. Since Gross, court decisions have continued to chip away at protections. As a result plaintiffs now must prove that age was a determinative cause for their employers adverse treatment of them. Before the Gross cases it was enough for plaintiffs to prove that age was one of the motivating factors.

POWADA would restore the standard of proof in age discrimination cases to the pre-2009 level and treat age discrimination as unjust as other forms of employment discrimination. Moreover, because courts have applied Gross' higher burden of proof to retaliation charges and to disability discrimination, POWADA would also amend the Age Discrimination in Employment Act, Title VIT's provision on retaliation, the Americans with Disabilities Act, and the Rehabilitation Act of 1973.

Please vote to restore fairness for older workers by passing the Protecting Older Workers Against Discrimination Act (H.R. 2062, S. 880).

Sincerely,

AARP, AFL-CIO, Alliance for Retired Americans, AMDA—The Society for Post-Acute and Long-Term Care Medicine, American Postal Workers Union Retirees Department, American Society on Aging, Association for Gerontology and Human Development in Historically Black Colleges and Universities, Association of Jewish Aging Services, Asociacion Nacional Pro Personas Mayores, Caring Across Generations, Center for Eldercare Improvement, Altarum, The Gerontological Society of America, Justice in Aging, LeadingAge, Medicare Rights Center, National Active and Retired Federal Employees Association, National Adult Day Services Association, National Alliance for Caregiving, National Association of Area Agencies on Aging, National Association of Nutrition and Aging Services Programs, National Association of Social Workers, National Caucus and Center on Black Aging, National Committee to Preserve Social Security and Medicare, National Council on Aging, National Indian Council on Aging, National Senior Corps Association, Pension Rights Center, Social Security Works, Women's Institute for a Secure Retirement.

Ms. BONAMICI. Mr. Speaker, I urge all of my colleagues to stand up for older workers and to support this bipartisan, bicameral bill.

Ms. FOXX. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, our colleagues on the other side say that workers feel they have been discriminated against. Well, we all have feelings and perceptions that are not accurate. I think my colleague from Illinois pointed out that the data simply does not support the feelings of many people, and I think we understand that in day-to-day life.

My colleagues on the other side of the aisle also contend that the 2009 Supreme Court decision in Gross v. FBL Financial Services has weakened age discrimination protections. They also contend this decision has deterred workers from seeking relief from age bias. But let's look at the data; let's not go on feelings.

In the 11 years preceding the 2009 Supreme Court decision in Gross, the Equal Employment Opportunity Commission, EEOC, the primary agency that enforces Federal laws that make it illegal to discriminate, received an average of 18,548 charges of discrimination per year related to age discrimination. An EEOC charge is a signed statement asserting employment discrimination. Now, in the 11 years following Gross, the EEOC received an average of 19,783 charges per year relating to age discrimination, a slight increase from the previous 11 years.

So, it is obvious from EEOC data that there is clearly no evidence workers have been discouraged from filing age discrimination charges with the agency since the 2009 Supreme Court decision. And we had a Democrat administration during that time and 1 year of a Republican administration.

We also find that age discrimination charges as a percentage of all charges

filed with EEOC are approximately the same for the 11 years before and after the Gross decision, 22.4 percent and 22.5 percent, respectively. Again, this does not indicate workers are somehow discouraged from filing age discrimination charges.

Congress should make fact-based decisions, Mr. Speaker, and in this case, the facts do not support feelings or the assertions made by the proponents of H.R. 2062.

I reserve the balance of my time.

Mr. SCOTT of Virginia. Mr. Speaker, I yield 2 minutes to the gentleman from Rhode Island (Mr. LANGEVIN).

Mr. LANGEVIN. Mr. Speaker, I thank the gentleman for yielding.

Today, I rise in strong support of H.R. 2062, the Protecting Older Workers Against Discrimination Act.

Fifty-four years ago, Congress passed the Age Discrimination in Employment Act. This law prohibits workplace discrimination against Americans over the age of 40, yet too many older Americans still face discrimination in the workplace.

In 2018, the U.S. Equal Employment Opportunity Commission acknowledged that ''age discrimination remains a significant and costly problem for workers, their families, and our economy.'' This is corroborated by a 2019 AARP survey which found that roughly 60 percent of older workers have witnessed or experienced age discrimination.

Making matters worse, a misguided Supreme Court ruling in 2009 set a precedent which now requires a plaintiff in an age discrimination suit to prove that his or her age was the only motivating factor in an employer's adverse actions. This is, quite frankly, unacceptable.

Older Americans bring unrivaled experience and wisdom to their jobs. It is up to us to restore the workplace protections to what Congress intended.

I would also like to note that age discrimination affects many workers with disabilities. This is an added challenge for the disability community, which faces several other barriers to competitive, integrated employment.

Even more disheartening is that some courts have applied the same misguided 2009 Supreme Court standard of claims to disability-based employment discrimination. In doing so, these lower courts are undermining the key promise of the Americans with Disabilities Act and throwing the congressional intent to the wind.

H.R. 2062 will correct that record. In fact, the Protecting Older Workers Against Discrimination Act will restore vital employment protections to millions of older American workers and workers with disabilities.

Mr. Speaker, I urge my colleagues on both sides of the aisle to join me today in supporting its final passage. It is the right thing to do.

Ms. FOXX. Mr. Speaker, I yield 3 minutes to the gentleman from Georgia (Mr. ALLEN).

Mr. ALLEN. Mr. Speaker, when considering any legislation, Congress first should determine whether the legislation is needed and, next, whether the bill under consideration will provide a workable, feasible, and effective response to the issue at hand.

Proponents of H.R. 2062 claim that the Supreme Court's decision in Gross, 2009, and Nassar, 2013, have harmed workers who faced age discrimination or unlawful retaliation. Publicly available data does not show that the Supreme Court decisions in Gross or Nassar have discouraged individuals from filing Equal Employment Opportunity Commission charges of discrimination, which is a signed statement asserting employment discrimination.

□ 1515

Unfortunately, the one subcommittee-level hearing earlier this year in the Committee on Education and Labor on H.R. 2062 also covered several other unrelated bills.

At the very least, this far-reaching legislation deserves more than a cursory examination.

Furthermore, a Democrat-invited witness who testified at the hearing in favor of H.R. 2062 acknowledged that ''it is difficult to quantify the impact that the Gross decision has had on the number of older workers who bring cases and the number of those who win them.''

The reality is that a review of EEOC data shows that the rate of EEOC age discrimination charges as a percentage of all charges filed is approximately the same for the 11 years before and after the Gross decision.

In fact, there has been an uptick in title VII retaliation charges as a percentage of all charges filed in the 7 years following the Nassar decision, which does not indicate individuals have been discouraged from filing these charges.

Court decisions show that plaintiffs have continued to win age discrimination and title VII retaliation cases in the wake of the Supreme Court's decisions in Gross and Nassar.

Like other Democrat-sponsored legislation in the 117th Congress, H.R. 2062 has been rushed through the committee without necessary examination, discussion, or consideration.

We should go back to the drawing board on this bill, because H.R. 2062 begs for reliable data and evidence, thoughtful deliberation, and genuine consideration.

Mr. SCOTT of Virginia. Mr. Speaker, I yield 2 minutes to the gentleman from Louisiana (Mr. CARTER).

Mr. CARTER of Louisiana. Mr. Speaker, I would like to thank Chairman SCOTT for the time that he has put in on this incredible piece of legislation, and thank Representative DAVIS for the work done to put together this important work.

As my colleagues today have said, this is a bipartisan, commonsense bill. It is exactly the type of work and things that Congress should be doing. This is our system at work.

The facts are very simple: Right now, because of a court decision, the standards for age discrimination are higher than that of any other type of discrimination. This bill fixes that and returns the country to what it was intended to be; that all forms of discrimination are illegal and must be stopped; that no form of discrimination is less wrong than another form of discrimination.

This is the right thing to do and this is the right time to do it. That higher standard has made it harder to prove cases and leaves older workers exposed to discrimination.

Age discrimination is wrong, plain and simple. It is also costly. According to a study by AARP, we lose out on $850 million of GDP each year because of it.

The cost is not just in abstract dollars. It comes from Americans who were skipped over for promotions they deserved. It comes from constituents who want to switch jobs but don't get a call back. It comes from your neighbor who lost their job and can still work but can't get anyone to even look at their resume.

The standard for proving age discrimination must be fair, it must be level, and it must be treated as other forms of discrimination.

Americans of all ages deserve the chance to work and to provide for their families, and the law should recognize their ability to work.

There is no place for ageism in the workforce, and this must stop.

The SPEAKER pro tempore. The time of the gentleman has expired.

Mr. SCOTT of Virginia. Mr. Speaker, I yield an additional 30 seconds to the gentleman from Louisiana.

Mr. CARTER of Louisiana. Mr. Speaker, I include in the RECORD a letter of support from The Leadership Conference on Civil and Human Rights dated June 22, 2021, asking for a yes vote on the Protecting Older Workers Against Discrimination Act, H.R. 2062.

THE LEADERSHIP CONFERENCE
ON CIVIL AND HUMAN RIGHTS,
Washington, DC, June 22, 2021.

VOTE YES ON THE PROTECTING OLDER WORKERS AGAINST DISCRIMINATION ACT (POWADA), H.R. 2062

DEAR REPRESENTATIVE: On behalf of The Leadership Conference on Civil and Human Rights, a coalition charged by its diverse membership of more than 220 national organizations to promote and protect the civil and human rights of all persons in the United States, we urge you to vote yes on H.R. 2062, the Protecting Older Workers Against Discrimination Act (POWADA), without amendments that would limit the bill's scope or undermine its protections. POWADA is a priority of The Leadership Conference, and we will include your vote in our voting record for the 117th Congress.

Despite longstanding federal prohibitions against workplace discrimination based on age, pervasive age discrimination in the United States continues to harm older workers—denying working people dignity on the job and threatening their economic security. In 2020, 78 percent of older workers reported

having seen or experienced age discrimination in the workplace, with Hispanic workers perceiving slightly more age discrimination at 82 percent. These numbers reflect an increase in age discrimination during the COVID–19 pandemic for all workers, across race and gender. Previous research on age discrimination before the pandemic reflects that women workers and workers of color, especially Black workers, have been more likely to experience age discrimination, and unemployment rates suggest that workers of color may continue to be more vulnerable. For example, although the unemployment rate in May 2021 for White workers ages 45–59 was 4.2 percent, for Black workers, the rate was 10.6 percent.

The ability to enjoy employment opportunities, free from unlawful discrimination, is key to promoting economic security for marginalized and multi-marginalized communities. Systemic racism and decades of structural inequality in almost every area of life, including education, health care, housing, and employment, have resulted in economic disparties that have severely threatened the lives and well-being of far too many people in the United States. Women, for example, are nearly two-thirds of all individuals aged 65 and over living in poverty, with women of color struggling at increased rates. LGBTQ older adults are also at increased risk of poverty compared to non-LGBTQ older adults, and people with disabilities are twice as likely to live in poverty than people without disabilities. Congress must ensure that our federal laws are able to protect all persons in the United States from unlawful discrimination. A key step toward that goal is to ensure that unlawful discrimination plays no role in employment practices,

POWADA is critically needed legislation that would restore fairness by reinstating well-established legal protections against workplace discrimination that were undermined by the 2009 Supreme Court decision in Gross v. FBL Financial Services, Inc, which imposed a higher burden of proof on working people in age discrimination cases. After Gross, working people must prove not only that age discrimination influenced an employer's conduct but that age played a decisive role in the employer's conduct. The burden of proof for age discrimination is now higher than the standard of proof for allegations of discrimination based on sex, race, religion, or national origin, sending the signal that some amount of age discrimination in the workplace is acceptable. Just as troubling, though, is that the Gross decision paved the way for the same unreasonably difficult burden of proof in cases in which an employer retaliates against workers who challenge workplace discrimination based on race, sex, or other grounds. POWADA is necessary to return the law to what it was before the Gross decision.

Simply put, no amount of unlawful discrimination in the workplace is acceptable. We therefore urge you to vote yes on H.R. 2062, the Protecting Older Workers Against Discrimination Act. If you have any questions or would like to discuss this matter further, please contact Gaylynn Burroughs, senior policy counsel.

Sincerely,

WADE HENDERSON,
Interim President & CEO.

JESSELYN MCCURDY,
Managing Director and Interim Executive Vice President for Government Affairs.

Ms. FOXX. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, Democrats claim H.R. 2062 merely conforms age discrimination and retaliation claims with current law regarding mixed-motive discrimination claims under title VII of the Civil Rights Act.

However, Congress specifically drafted the Age Discrimination in Employment Act, ADEA, to be different from title VII, because age is uniquely different from the characteristics on which title VII prohibits discrimination, namely, race, color, religion, sex, or national origin.

The ADEA states that it is lawful for an employer to take an employment action otherwise prohibited by the statute if the differential treatment is ''based on reasonable factors other than age.''

Notably, this provision is not found in title VII.

The Supreme Court has also explained in several cases why age discrimination differs from other forms of discrimination.

For example, the Supreme Court, in Meacham v. Knolls Atomic Power Laboratory, in 2008, wrote that, ''Congress took account of the distinctive nature of age discrimination and the need to preserve a fair degree of leeway for employment decisions with effects that correlate with age.''

In addition, the Supreme Court, in the 2013 Nassar case, explained why a mixed-motive standard is ill-suited for retaliation claims.

The Supreme Court observed that with regard to mixed-motive standards in retaliation cases, ''lessening the causation standard could contribute to the filing of frivolous claims, which would siphon resources from efforts by employers, administrative agencies, and courts to combat workplace harassment.''

Allowing mixed-motive claims in age and retaliation cases, which H.R. 2062 does, will lead to more frivolous legislation.

We should heed congressional and Supreme Court precedents and vote down H.R. 2062.

Mr. Speaker, I reserve the balance of my time.

Mr. SCOTT of Virginia. Mr. Speaker, I yield myself such time as I may consume.

I include in the RECORD a letter from the AARP, which says, in part, ''Older workers are valuable assets to their employers and the economy. Despite that, 78 percent of older workers reported having seen or experienced age discrimination in the workplace in 2020, up markedly from 61 percent in 2018. More than half of older workers are forced out of a job before they intend to retire. Nine out of 10 of those who do find work never again match their prior earnings. Making matters worse, the COVID–19 pandemic has significantly diminished job prospects and future retirement security of older workers. In April, over half of job seekers ages 55 and older continued to be long-term unemployed, 53.3 percent, compared to 42.3 percent of job seekers ages 16 to 54. The labor force participation rates for older women workers, along with their earning power and future retirement security, have been particularly hard-hit by COVID.'' All of that is in the letter.

AARP,
June 14, 2021.

DEAR REPRESENTATIVE: On behalf of our nearly 38 million members and all older Americans nationwide, AARP urges you to vote in support of H.R. 2062, the Protecting Older Workers Against Discrimination Act (POWADA), important bipartisan legislation sponsored by Chairman SCOTT and Rep. RODNEY DAVIS (R–IL) to restore protections against age discrimination.

Older workers are valuable assets to their employers and the economy. Despite that, 78 percent of older workers reported having seen or experienced age discrimination in the workplace in 2020, up markedly from 61 percent in 2018. More than half of older workers are forced out of a job before they intend to retire. Nine out of 10 of those who do find work never again match their prior earnings. Making matters worse, the COVID–19 pandemic has significantly diminished the job prospects and future retirement security of older workers. In April, over half of job seekers ages 55 and older continued to be long-term unemployed (53.3 percent) compared with 42.3 percent of job seekers ages 16 to 54. The labor force participation rates for older women workers, along with their earning power and future retirement security, have been particularly hard-hit by COVID.

POWADA is a bipartisan, commonsense bill that would restore fairness for older workers. The bill reinstates well-established legal standards on workplace discrimination that were undermined by the 2009 Supreme Court decision in Gross v. FBL Financial Services, Inc. and subsequent discrimination cases. POWADA would help level the playing field for older workers and restore their legal rights. Older Americans have waited for over a decade for this legislation to be enacted.

AARP strongly supports POWADA and urges you to enact it as soon as possible. If you have any questions, please feel free to contact me, or have your staff contact Michele Varnhagen on our Government Affairs staff.

Sincerely,

BILL SWEENEY,
SENIOR VICE PRESIDENT,
Government Affairs.

Mr. SCOTT of Virginia. Mr. Speaker, I reserve the balance of my time.

Ms. FOXX. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I am going to repeat: Republicans hate discrimination in any form. We particularly do not want any kind of discrimination in the workplace, and we do not want discrimination against older workers.

We know that older workers were excelling in the pre-pandemic economy. According to the Bureau of Labor Statistics, BLS, employment for workers age 65 and older tripled from 1988 to 2018, while employment for younger workers grew by only a third.

The number of employed people age 75 and older nearly quadrupled from 461,000 in 1988 to 1.8 million in 2018.

As the country continues to recover from the COVID–19 pandemic, BLS recently reported that job openings reached a record high of 9.3 million in April 2021, while hiring lags far behind.

Employers are desperate to fill good-paying jobs, but qualified workers are hard to find because of Democrat-enacted policies.

My colleagues on the other side of the aisle continue to paint a bleak picture of job opportunities for older Americans, when, in fact, employment trends for older workers have been positive in recent decades and will continue to improve as the country fully reopens following the pandemic.

According to BLS, in 1998, the median weekly earnings of older, full-time employees was 77 percent of the median for workers 16 and up. In 2018, older workers earned 7 percent more than the median for all workers.

The labor force participation rate for older Americans has been rising steadily since the late 1990s. Participation rates for younger age groups either declined or flattened over this period.

Over the past 20 years, the number of older workers on full-time work schedules grew 2½ times faster than the number working part time.

Mr. Speaker, I reserve the balance of my time.

Mr. SCOTT of Virginia. Mr. Speaker, I yield 2 minutes to the gentlewoman from Texas (Ms. GARCIA).

Ms. GARCIA of Texas. Mr. Speaker, I rise today to strongly support your bill to protect older Americans against discrimination.

It is unfortunate, Mr. Speaker, but age discrimination and ageism are still very common in many American workplaces.

During the worst of this pandemic, older workers and women experienced many of the demotions and layoffs that we have heard about so much.

Protections against age discrimination are more important than ever as we seek to ensure that employers do not use someone's age as a motivating factor to deny them a promotion, to demote them, or to even fire them.

When age discrimination occurs, many people do not report it. But when they do, under current law, it is incredibly difficult to prove that age was the motivating factor.

Therefore, Congress must ensure that we do not place burdensome requirements of proof of age discrimination on those who actually bring age discrimination claims to the forefront.

That is why this bill is so very, very important, and I thank the chairman for his tireless efforts on this cause.

While this is an excellent bill, there is one provision I wish we had included that currently is not. In the fight against age discrimination, we need to clearly protect folks at the very first opportunity, the hiring process.

That is why I introduced a bill last week, the Protect Older Job Applicants Act. It simply clarifies that the provisions under the Age Discrimination in Employment Act also apply to job applicants. Most people already assume this is the case. However, it is not.

After two recent Federal court cases about age discrimination, there has been confusion about the applicability of protections to applicants or employees only.

My bill seeks to provide clarity and ultimately protect older Americans from the very beginning, at the application.

I know that this is a priority for the chairman also, and I will continue to work with him to make sure that we continue the conversation on this shared priority, because nobody should be denied a job opportunity solely because of their age.

The SPEAKER pro tempore. The time of the gentlewoman has expired.

Mr. SCOTT of Virginia. Mr. Speaker, I yield an additional 30 seconds to the gentlewoman from Texas.

□ 1530

Ms. GARCIA of Texas. Mr. Speaker, I also include in the RECORD a statement of support for this bill from AARP.

AARP,
June 14, 2021.

DEAR REPRESENTATIVE: On behalf of our nearly 38 million members and all older Americans nationwide, AARP urges you to vote in support of H.R. 2062, the Protecting Older Workers Against Discrimination Act (POWADA), important bipartisan legislation sponsored by Chairman SCOTT and Rep. RODNEY DAVIS (R–IL) to restore protections against age discrimination.

Older workers are valuable assets to their employers and the economy. Despite that, 78 percent of older workers reported having seen or experienced age discrimination in the workplace in 2020, up markedly from 61 percent in 2018. More than half of older workers are forced out of a job before they intend to retire. Nine out of 10 of those who do find work never again match their prior earnings. Making matters worse, the COVID–19 pandemic has significantly diminished the job prospects and future retirement security of older workers. In April, over half of job seekers ages 55 and older continued to be long-term unemployed (53.3 percent) compared with 42.3 percent of job seekers ages 16 to 54. The labor force participation rates for older women workers, along with their earning power and future retirement security, have been particularly hard-hit by COVID.

POWADA is a bipartisan, commonsense bill that would restore fairness for older workers. The bill reinstates well-established legal standards on workplace discrimination that were undermined by the 2009 Supreme Court decision in Gross v. FBL Financial Services, Inc. and subsequent discrimination cases. POWADA would help level the playing field for older workers and restore their legal rights. Older Americans have waited for over a decade for this legislation to be enacted.

AARP strongly supports POWADA and urges you to enact it as soon as possible. If you have any questions, please feel free to contact me, or have your staff contact Michele Varnhagen on our Government Affairs staff.

Sincerely,

BILL SWEENEY,
Senior Vice President,
Government Affairs.

Ms. FOXX. Mr. Speaker, I reserve the balance of my time.

Mr. SCOTT of Virginia. Mr. Speaker, I yield 2 minutes to the gentlewoman from North Carolina (Ms. ADAMS), the chair of the Subcommittee on Workforce Protections.

Ms. ADAMS. Mr. Speaker, I thank the gentleman for his work on this bill.

Although House Democrats continue to work for an end to the pandemic, COVID–19 has changed the American workforce. People from all walks of life have suffered. Older Americans in the workforce continue to feel the fallout from the coronavirus.

The perception that older workers are not as valuable as their younger counterparts persists. The myth that older workers are unproductive and costly persists. The idea that older Americans do not value their careers, their job, or their work persists. Because of these challenges, older workers are more likely to remain out of the workforce when they lose a job.

Age discrimination is a real threat to our workforce, but it doesn't have to be that way. That is why the Protecting Older Workers Against Discrimination Act is so very important. Older workers need specific protections under the law.

As we look ahead to a stronger economy and upcoming legislation, I urge Members to remember the importance of older workers to our economy, to our workforce, and to our families.

Mr. Speaker, I include in the RECORD a letter from the group Paralyzed Veterans of America.

PARALYZED VETERANS OF AMERICA,
Washington, DC, May 24, 2021.

Hon. ROBERT SCOTT,
Chairman, Education and Labor Committee,
House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: Paralyzed Veterans of America (PVA) is pleased to support reintroduction of the Protecting Older Workers against Discrimination Act (POWADA). PVA is the nation's only Congressionally-chartered veterans service organization solely dedicated to representing veterans with spinal cord injuries and/or disorders. POWADA is important to our members as people with disabilities because it will restore well-established legal standards on workplace discrimination that were undermined by a 2009 Supreme Court decision.

In 2009, in the case of Gross v. FBL Financial Services, the U.S. Supreme Court decided to impose a much higher burden of proof on workers who allege age discrimination than on those who allege discrimination based on race, sex, national origin, or religion. By changing the legal standards in age discrimination cases—from having to prove that age played a role in the worker's treatment to having to show that age played the decisive role in the worker's treatment—the Court set aside decades of legal precedent and signaled to employers that some amount of age discrimination is permissible. Moreover, the decision made it exponentially more difficult for workers who have experienced age discrimination to seek redress in court and prove their case.

Many courts began applying the Gross decision to weaken other civil rights laws, including disability discrimination cases. In 2019, in the case of Natofsky v. City of N.Y., the Second Circuit joined the Fourth, Sixth, and Seventh Circuits in ruling that disability discrimination under the ADA and the Rehabilitation Act of 1973 must be established under the higher, ''butfor'' standard. Federal courts have consistently, but in our view erroneously, applied Gross to claims under the Americans with Disabilities Act (ADA), ADA retaliation, and the Rehabilitation Act of 1973. Some courts have questioned the applicability of Gross to disability

claims without deciding the issue, but no court has declined to apply Gross to the ADA/Rehabilitation Act. Some courts have even begun to apply Gross to disability discrimination in public accommodations.

The unemployment rate for workers with disabilities is almost double the rate for workers without disabilities. For all the workers affected by the Gross decision, POWADA is a jobs bill.

By clarifying that discrimination may play no role in employment decisions under the ADA and certain other laws, this legislation would simply restore the law prior to the Gross decision.

PVA appreciates your continued pursuit of this important legislation and urges Congress to act swiftly on its passage.

Sincerely,

HEATHER ANSLEY, MSW, ESQ.,
Associate Executive Director.

Ms. FOXX. Mr. Speaker, I yield myself such time as I may consume to close.

Mr. Speaker, older Americans make vital contributions in the workplace. Committee Republicans are committed to eliminating discrimination in the workplace, rebuilding our sluggish economy, and producing a competitive workforce.

Unfortunately, H.R. 2062 is a destructive and misleading bill that does not protect older workers, and it rewards trial lawyers at the expense of sound public policy. It is Democrats promising deliverance, but delivering disappointment.

This sweeping one-size-fits-all ruse is not the answer, unless Congress decides it wants to benefit trial lawyers at the expense of older American workers.

Mr. Speaker, I strongly encourage my colleagues to vote ''no'' on H.R. 2062, and I yield back the balance of my time.

Mr. SCOTT of Virginia. Mr. Speaker, I yield myself the balance of my time to close.

The Protecting Older Workers Against Discrimination Act is a bipartisan bill that has been introduced over many Congresses with growing support. Over the last decade, Members have debated this bill through multiple legislative hearings, and bills in both the House and the Senate have been introduced and improved every Congress since 2009.

Despite the bipartisan legacy of this proposal, some of my colleagues have raised disappointing opposition today. But let's be clear. This bill is not about increasing the number of age discrimination claims. It is about giving victims of discrimination a fair shot at getting relief. It is simply restoring basic protections for older workers.

Yes, discrimination against older workers is already illegal, but, regrettably, it is unnecessarily harder to prove because of the 2009 decision. In spite of the fact that it is more difficult, cases are still being brought. But if the cases were as easy to bring or the same difficulty to bring as other cases, even more cases would have been filed.

We know this is more difficult because in the original case of Gross v. FBL Financial Services, Jack Gross successfully proved that his employer had demoted older workers who refused to accept a buyout, while giving their jobs to younger workers. Yet it was only after the Supreme Court changed the rules and required Mr. Gross to retry his case that he lost with the higher standard, because, despite having the same facts, the same parties, and the same court, he lost his case.

The Protecting Older Workers Against Discrimination Act is designed to ensure that older workers like Mr. Gross are not denied justice and fair treatment that they deserve.

We have heard about attorneys' fees. We need to just remind everybody that lawyers are only awarded attorneys' fees when they win the case. So if you want to reduce attorneys' fees, the businesses can stop discriminating.

I hope we can all agree that it is time to stand up for older workers and treat all workers facing discrimination, whether it is on the basis of sex, race, religion, national origin, or age, with consistency and fairness.

I thank the gentleman from Illinois (Mr. RODNEY DAVIS) again for working with me on this bipartisan priority.

Mr. Speaker, I urge my colleagues to vote ''yes'' on this bill, and I yield back the balance of my time.

Ms. MOORE of Wisconsin. Mr. Speaker, I rise today in strong support of H.R. 2062, the Protecting Older Workers Against Discrimination Act of 2021. I am pleased to be a cosponsor of this measure.

I'm so pleased to see bipartisan support for this bill. Providing older workers with the legal tools they need to challenge unjust discrimination in the workplace should not be a partisan issue.

According to the Bureau of Labor Statistics, our workforce is working longer than they have before. Those who are still working at or above the retirement age may be forced to do so because they have no other choice.

This vulnerable part of the American workforce deserves to have the same promotions and prospects as any other age group in a truly fair labor force. Unfortunately, age-based discrimination in the workplace can make it difficult for older individuals.

And since a 2009 Supreme Court ruling, employees who felt that they were wrongly discriminated against based on age have had to meet a much more burdensome standard to get relief in court under federal law.

That ruling went against decades of legal precedent and weakened protections for our working class, burdening victims and shielding those employers who in engage in discriminatory actions from accountability.

That is why it is so important that we pass H.R. 2062, and help older workers who have suffered discrimination.

Those facing discrimination should not have to jump through more hoops to ensure that their rights are protected. As noted by the Leadership Conference on Civil and Human Rights, ''The ability to enjoy employment opportunities, free from unlawful discrimination, is key to promoting economic security for marginalized and multi-marginalized communities.''

I urge my colleagues to vote in support of this bill to protect our American workers and hold companies accountable for discriminatory practices.

I thank the Chairman for his leadership on this issue.

Ms. JACKSON LEE. Madam Speaker, as a senior member of the Judiciary Committee and the Democratic Task Force on Aging and Families, and as cosponsor, I rise in strong support of the bipartisan H.R. 2062, the ''Protecting Older Americans Against Discrimination Act of 2021,'' which restores the burden of proof standard for workers alleging age discrimination back to the pre-2009 standard—returning the burden back to the same standard used for alleged discrimination based on race, sex, national origin, and religion.

This important bill is supported by numerous key organizations, including AARP, Leadership Council of Aging Organizations, National Council on Aging, Justice in Aging, AAUW, Consortium for Citizens with Disabilities (CCD), American Association of People with Disabilities (AAPD), Disability Rights Education & Defense Fund (DREDF), National Disability Institute, Easter Seals, National Partnership for Women & Families, National Women's Law Center, National Education Association, AFSCME, NETWORK Lobby for Catholic Social Justice, and Paralyzed Veterans of America.

Mr. Speaker, prior to 2009, older workers alleging age discrimination in the workplace faced the same burden of proof as those who allege discrimination based on race, sex, national origin, or religion.

This burden of proof is called the ''mixed-motive'' standard, where the complaining party need only prove that age (or whatever type of discrimination is being alleged) was one of the motivating factors behind the employer's adverse action.

This situation changed dramatically in 2009, when in a 5–4 decision in Gross v. FBL Financial Services Inc., 557 U.S. 157 (2009), the Supreme Court erected a new and substantial legal barrier in the path of older workers—imposing a much higher burden of proof on workers alleging age discrimination.

This higher burden of proof requires the older worker alleging age discrimination to prove that age was the decisive and determinative cause for the employer's adverse action rather than just a motivating factor in the employer's action.

Mr. Speaker, this Supreme Court decision sent a terrible message to employers and the courts that some types of discrimination are not as wrong, or as unlawful, as other forms of discimination.

H.R. 2062, the Protecting Older Americans Against Discrimination Act of 2021, simply returns the burden of proof for workers alleging age discrimination back to where it was before the odious decision in Gross v. FBL Financial Services.

In addition, since the Gross decision in 2009, some courts have extended the Gross's unreasonably difficult burden of proof to two other types of worker discrimination complaints: retaliation cases, in which an employer retaliates against a worker who challenges workplace discrimination; and disability discrimination cases.

As a result, in returning to the pre-Gross burden of proof standard, H.R. 2062 ensures that all victims of workplace discrimination face the same burden of proof—the ''mixed motive'' burden of proof that has historically

been used in worker discrimination cases—by amending not only the Age Discrimination in Employment Act (ADEA), but also the anti-discrimination provision of Title VII of the Civil Rights Act, the Americans with Disabilities Act, and the Rehabilitation Act.

Mr. Speaker, it should be noted that age discrimination continues to be a significant problem in the workplace.

Enforcement statistics from the Equal Employment Opportunity Commission (EEOC) show complaints of age discrimination to be climbing.

In 2000, the EEOC received roughly 16,000 charges of age discrimination; in 2017, the EEOC received over 20,000 complaints—accounting for 23 percent of all discrimination charges filed.

A 2013 AARP study found that more than 6 in 10 workers ages 45 to 74 said they have seen or experienced age discrimination in the workplace .

In this 2013 AARP study, nearly 20 percent of respondents said they were not hired for a job because of their age and nearly 10 percent said they were laid off or fired due to their age.

Age discrimination is a key reason it takes unemployed older workers nearly a full year, on average, to find another job.

And when they do land a new job, it is often for less money, which can have a crushing impact on older workers' long-term financial security and ability to live independently as they age.

Older workers are a valuable asset to their employers and the economy, yet more than half of older workers are forced out of a job before they intend to retire, and even if they find work again, 9 in 10 never match their prior earnings.

This is wrong; it is unfair and that is why I strongly support H.R. 2062, the Protecting Older Americans Against Discrimination Act of 2021, and urge all Members to join me in voting for its passage by a resounding and overwhelming margin.

The SPEAKER pro tempore. All time for debate has expired.

Each further amendment printed in part B of House Report 117–71 not earlier considered as part of amendments en bloc pursuant to section 3 of House Resolution 486, shall be considered only in the order printed in the report, may be offered only by a Member designated in the report, shall be considered as read, shall be debatable for the time specified in the report equally divided and controlled by the proponent and an opponent, may be withdrawn by the proponent at any time before the question is put thereon, shall not be subject to amendment, and shall not be subject to a demand for division of the question.

It shall be in order at any time for the chair of the Committee on Education and Labor or his designee to offer amendments en bloc consisting of further amendments printed in part B of House Report 117–71, not earlier disposed of. Amendments en bloc shall be considered as read, shall be debatable for 20 minutes equally divided and controlled by the chair and ranking minority member of the Committee on Education and Labor or their respective designees, shall not be subject to amendment, and shall not be subject to a demand for division of the question.

AMENDMENTS EN BLOC NO. 1 OFFERED BY MR. SCOTT OF VIRGINIA

Mr. SCOTT of Virginia. Mr. Speaker, pursuant to section 3 of House Resolution 486, I rise to offer amendments en bloc No. 1.

The SPEAKER pro tempore. The Clerk will designate the amendments en bloc.

Amendments en bloc No. 1 consisting of amendment Nos. 1 and 3, printed in part B of House Report 117–71, offered by Mr. SCOTT of Virginia:

AMENDMENT NO. 1 OFFERED BY MR. BROWN OF MARYLAND

At the end, add the following:

SEC. 5. REPORTS.

The Chairman of Equal Employment Opportunity Commission shall submit to the Committee on Education and Labor of the House of Representatives and the Committee on Health, Education, Labor, and Pensions of the Senate a report at 1-year intervals on the number of age discrimination in employment claims brought under this Act with the Equal Employment Opportunity Commission in the period for which such report is submitted.

AMENDMENT NO. 8 OFFERED BY MS. WILLIAMS OF GEORGIA

At the end, add the following:

SEC. 5. REPORT.

(a) REPORT.—Not later than 2 years after the date of enactment of this Act, the Equal Employment Opportunity Employment Commission shall submit to the Congress, and make available to the public, a report that contains analysis of any disparities that covered individuals, as defined in subsection (b), face in pursuing relief from discrimination in employment under the mixed motive evidentiary standard.

(b) COVERED INDIVIDUALS DEFINED.—The term ''covered individuals'' means individuals who face discrimination in employment based on characteristics protected under the Age Discrimination in Employment Act of 1967 combined with one or more intersectional characteristics protected under title VII of the Civil Rights Act of 1964, the Americans with Disabilities Act of 1990, or the Rehabilitation Act of 1973.

The SPEAKER pro tempore. Pursuant to House Resolution 486, the gentleman from Virginia (Mr. SCOTT) and the gentlewoman from North Carolina (Ms. FOXX) each will control 10 minutes.

The Chair recognizes the gentleman from Virginia.

Mr. SCOTT of Virginia. Mr. Speaker, I yield myself 1 minute.

Mr. Speaker, there are two amendments in this en bloc amendment.

Mr. BROWN has offered an amendment to require the EEOC to submit an annual report to Congress on the number of age discrimination claims brought under this act.

Ms. WILLIAMS has offered an amendment to require the EEOC to submit a report to Congress on any remaining disparities faced by workers pursuing relief under the mixed motive standard whose cases were covered by the ADEA, as well as other antidiscrimination laws.

Mr. Speaker, I reserve the balance of my time.

Ms. FOXX. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I rise in opposition to the Democrat amendments.

As I understand it, Representative BROWN's amendment requires the EEOC chair to submit five annual reports to Congress on the number of age discrimination claims brought to the EEOC under this act. If H.R. 2062 somehow gets signed into law, these reports will be a day late and many dollars short because the law will have already harmfully reduced the burden of proof in these cases and nullified decades of Supreme Court precedent.

Before discussing my concerns with this amendment, I admit I am puzzled that it requires a study on how this legislation will affect future age discrimination claims when evidence is sorely lacking that there is a need for H.R. 2062 in the first place.

A witness who testified on H.R. 2062 before the Committee on Education and Labor acknowledged that EEOC data has not shown workers are discouraged from filing age discrimination charges with the EEOC following the Supreme Court's 2009 decision in Gross v. FBL Financial Services.

With respect to this amendment, I have concerns about the feasibility and viability of the mandated reports. The amendment requires the EEOC to report each year for 5 years on charges filed with the agency under H.R. 2062.

H.R. 2062 drastically expands liability by allowing mixed motive claims in cases involving the Age Discrimination in Employment Act—ADEA—and three other statutes. However, when workers file charges with the EEOC, the worker will likely not indicate whether the charge involves mixed motives, nor is EEOC likely to be able to classify charges as being mixed motive or not. EEOC will therefore be unable to determine whether charges have been filed pursuant to H.R. 2062.

I am very doubtful EEOC would be able to comply with this amendment's requirements, and Congress should not include an unworkable mandate on an agency. Congress has enacted significant laws prohibiting employment discrimination, including the ADEA, the Americans with Disabilities Act, the Rehabilitation Act, and the Civil Rights Act, CRA.

Congress purposefully enacted separate nondiscrimination statutes, including the ADEA, because age discrimination involves unique and complex factors, as do the other forms of discrimination addressed in these statutes.

H.R. 2062 overturns Supreme Court precedent, allows a plaintiff to argue that age was only a motivating but not decisive factor that led to an employer's unfavorable employment action. Allowing such mixed motive claims will eliminate the carefully balanced standard Congress adopted when it passed the ADEA, resulting in more frivolous lawsuits.

Here's why: Under H.R. 2062, a plaintiff is very unlikely to receive any

monetary award from the defendant because most employers will be able to demonstrate they would have taken the same employment action regardless of the worker's age or other impermissible reasons.

Mr. Speaker, I reserve the balance of my time.

Mr. SCOTT of Virginia. Mr. Speaker, I yield 3 minutes to the gentlewoman from Georgia (Ms. WILLIAMS).

Ms. WILLIAMS of Georgia. Mr. Speaker, I rise today in support of the Protecting Older Workers Against Discrimination Act and my amendment to the bill.

For older job seekers and workers, age discrimination remains a barrier to both getting employed and staying employed. According to an AARP survey released in 2019, three in five older workers report that they have seen or experienced age discrimination on the job.

Age discrimination should have no place in decisions about an employee. It doesn't matter if age is one factor or the only factor in these decisions. Discrimination is still wrong.

Under current law, an older worker must prove that a negative action was taken against them solely because of their age to pursue legal remedy for age discrimination. That leaves out a lot of workers who have been marginalized because of their age.

The bill before us would create a reasonable burden of proof under the law to allow more workers who have faced age discrimination to pursue relief.

Enacting this legislation would be a monumental step, but we have more to do to ensure that all older workers are served well by protections under law because the circumstances facing older workers are not all the same.

Many older workers face intersectional discrimination based not only on their age, but also due to factors like their race, their gender, or disability status. For example, in a 2017 experimental study published by the Federal Reserve Bank, researchers found that older women encounter more age discrimination in the hiring process and callback process than men.

To ensure equitable protection for individuals experiencing intersectional discrimination, we have to understand any disparities they may face in pursuing relief from discrimination as this legislation is implemented.

My amendment tasks the Equal Employment Opportunity Commission with completing a study on these disparities and reporting back to Congress within 2 years. This analysis will be crucial to ensuring our laws are serving all of us and that we are truly reaching the ideal of equality for all.

Mr. Speaker, I urge my colleagues to support my amendment and the underlying legislation.

□ 1545

Ms. FOXX. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, as I understand it, Representative WILLIAMS' amendment requires EEOC to submit a contrived and convoluted report to Congress analyzing disparities that individuals face in pursuing relief under the mixed-motive evidentiary standard. The report must examine age discrimination combined with discrimination based on race, color, religion, sex, national origin, or disability.

This amendment does nothing to address the fatal flaws in the bill that would allow mixed-motive claims in age retaliation and disability cases, which will increase frivolous litigation while not providing any monetary damages for nearly all plaintiffs.

As a practical matter, I question whether EEOC will be able to complete the tortuous analysis proposed in the amendment.

As I noted previously, workers filing discrimination or retaliation charges with EEOC do not indicate whether they involve a mixed-motive claim, and EEOC does not collect this data. A mixed-motive claim is something a plaintiff's attorney adds to a lawsuit.

As such, I am skeptical whether EEOC will be able to find any data relating to mixed-motive claims.

More importantly, the amendment, which was submitted and then amended after the Rules Committee's stated deadline, will not fix the bill's many shortcomings, such as allowing mixed-motive claims in age discrimination and retaliation cases, even though congressional and Supreme Court precedents strongly advise against these changes.

Mr. Speaker, I urge a ''no'' vote on this amendments en bloc, and I reserve the balance of my time.

Mr. SCOTT of Virginia. Mr. Speaker, I yield 2½ minutes to the gentleman from Maryland (Mr. BROWN).

Mr. BROWN. Mr. Speaker, I would like to first recognize the hard work and the leadership of Chairman BOBBY SCOTT and the entire Education and Labor Committee on this outstanding underlying bill.

When older workers lose their jobs, they are much more likely to join the ranks of the long-term unemployed. Unfortunately, discrimination seems to be a significant factor in this.

Enforcement statistics from the EEOC show age discrimination complaints are climbing. In 2000, the EEOC received roughly 16,000 complaints of age discrimination, and 17 years later, the EEOC received 20,000 complaints that year, accounting for 23 percent of all discrimination charges filed.

As Ms. WILLIAMS mentioned, a 2018 survey conducted by the AARP found that three in five workers age 45 and older have seen or experienced age discrimination in the workplace.

The Protecting Older Workers Against Discrimination Act would restore legal protections for older Americans and hold employers accountable for age discrimination.

My amendment would require the EEOC to submit annual reports to Congress on the number of age discrimination claims brought under this act. Congress needs this information in a timely and transparent way to ensure our older workers are being properly protected and heard.

Discrimination is discrimination, whether it be age, race, gender, religion, gender identity, or sexual orientation, and all should be treated fairly under the law.

My amendment and the underlying bill are commonsense pieces of legislation that would restore fairness for all workers. I strongly encourage my colleagues to support this amendments en bloc and the underlying legislation.

Ms. FOXX. Mr. Speaker, I reserve the balance of my time.

Mr. SCOTT of Virginia. Mr. Speaker, I would like to state that these two amendments would improve the bill.

The one from Mr. BROWN would give information that is already being provided now, but this would just make sure it continues. It is being provided on a voluntary basis, these annual reports.

And Ms. WILLIAMS offers a very interesting analysis that some people may be being discriminated against on multiple grounds and pointed out the Federal Reserve study that showed that older workers who happen to be women fared a lot worse than the older workers who happen to be men. We may need to figure out how we deal with that, but we need the data before we can move forward.

I hope that we adopt this amendment, and, Mr. Speaker, I yield back the balance of my time.

Ms. FOXX. Mr. Speaker, the only parties who will win in nearly all cases under H.R. 2062 with these amendments, if they are passed, are trial lawyers. Unfortunately, Democrats have chosen to further their pro-trial lawyer agenda by putting forward H.R. 2062, legislation that masquerades as protection for workers.

H.R. 2062 is yet another one-size-fits-all approach that fails to address the purported problem, neglects real-world experiences, and disregards decades of Supreme Court precedent.

These poorly drafted fig leaf amendments in the en bloc do nothing to address the fundamental flaws in H.R. 2062 and place an unworkable mandate on EEOC. I urge my colleagues to oppose them.

Mr. Speaker, I yield back the balance of my time.

The SPEAKER pro tempore. Pursuant to House Resolution 486, the previous question is ordered on the amendments en bloc offered by the gentleman from Virginia (Mr. SCOTT).

The question is on the amendments en bloc.

The question was taken; and the Speaker pro tempore announced that the ayes appeared to have it.

Ms. FOXX. Mr. Speaker, on that I demand the yeas and nays.

The SPEAKER pro tempore. Pursuant to section 3(s) of House Resolution 8, the yeas and nays are ordered.

Pursuant to clause 8 of rule XX, further proceedings on this question are postponed.

AMENDMENTS EN BLOC NO. 2 OFFERED BY MR. SCOTT OF VIRGINIA

Mr. SCOTT of Virginia. Mr. Speaker, pursuant to section 3 of House Resolution 486, I rise to offer amendments en bloc No. 2.

The SPEAKER pro tempore. The Clerk will designate the amendments en bloc.

Amendments en bloc No. 2 consisting of amendment Nos. 2 and 5, printed in part B of House Report 117–71, offered by Mr. SCOTT of Virginia:

AMENDMENT NO. 2 OFFERED BY MR. ALLEN OF GEORGIA

At the end of the bill, add the following:

SEC. 5. EFFECTIVE DATE.

(a) GAO STUDY.—Subject to subsection (b), this Act and the amendments made by this Act shall not take effect until the date the Government Accountability Office reports to the Congress the results of a study such Office carries out to determine whether—

(1) the Supreme Court's decisions in *Gross v. FBL Financial Services, Inc.*, 557 U.S. 167 (2009), and *Texas Southwestern Medical Center v. Nassar*, 570 U.S. 338 (2013), have discouraged individuals from filing age discrimination charges and title VII of the Civil Rights Act of 1964 retaliation charges with the Equal Employment Opportunity Commission,

(2) such decisions have discouraged individuals from filing age discrimination cases and title VII retaliation cases, and

(3) the success rates of age discrimination cases and title VII retaliation cases brought has decreased.

(b) LIMITATION.—If the results of the study carried out under subsection (a) show that individuals have not been discouraged as described in such subsection and that the success rate of cases described in such subsection has not decreased, then this Act and the amendments made by this Act shall not take effect.

AMENDMENT NO. 5 OFFERED BY MS. FOXX OF NORTH CAROLINA

Page 1, beginning on line 14, strike ''or an activity protected by subsection (d)''.

Page 2, beginning on line 2, strike '', including under paragraph (1) or by any other method of proof'' and inserting ''with respect to subsections (a), (b), (c), (e), and (f) of section 623''.

Page 4, line 2, insert ''discriminatory'' after ''involving''.

Page 4, strike line 4 and all that follows through line 24 (and make such technical and conforming changes as may be appropriate).

Page 5, beginning on line 17, strike ''or an activity protected by subsection (a) or (b) of section 503''.

Page 6, beginning on line 5, strike ''or an activity protected by subsection (a) or (b) of section 503''.

Page 6, strike lines 8 through 18 (and make such technical and conforming changes as may be appropriate).

The SPEAKER pro tempore. Pursuant to House Resolution 486, the gentleman from Virginia (Mr. SCOTT) and the gentlewoman from North Carolina (Ms. FOXX) each will control 10 minutes.

The Chair recognizes the gentleman from Virginia.

Mr. SCOTT of Virginia. Mr. Speaker, I reserve the balance of my time.

Ms. FOXX. Mr. Speaker, I yield 5 minutes to the gentleman from Georgia (Mr. ALLEN).

Mr. ALLEN. Mr. Speaker, as I said earlier, when considering any legislation, the House should first determine whether legislation is needed and, next, whether the bill under consideration will adequately address or improve the situation.

Before H.R. 2062 was brought to the House floor, the Committee on Education and Labor did not have a standalone hearing on the bill and instead held a subcommittee-level hearing on multiple, wide-ranging topics.

This complex and sweeping legislation deserves further examination by the committee so Members can gather more information from a variety of experts to make an informed decision regarding its practicality.

Supporters of H.R. 2062 claim the Supreme Court's 2009 decision in the Gross case and 2013 decision in the Nassar case have harmed workers who faced age discrimination or unlawful retaliation for claiming discrimination. Publicly available data does not show that the Supreme Court decisions in the Gross or Nassar cases have discouraged individuals from filing EEOC charges.

A Democrat-invited witness who testified acknowledged that ''it is difficult to quantify the impact that the Gross decision has had on the number of older workers who bring cases and the number of those who win them.''

This witness also acknowledged that ''when we might have expected a drop in charges due to Gross-inspired discouragement from employment attorneys, there was a sizeable jump in the number of ADEA charges filed with the EEOC.''

In addition, a review of the Equal Employment Opportunity Commission, or EEOC, data shows that, as a percentage of all charges filed, the rate of EEOC age discrimination charges is approximately the same as 11 years before the Gross decision, with a slightly higher percentage of age discrimination charges filed after the Gross decision.

As a percentage of all charges filed in the 7 years following the Nassar decision, there has also been an increase in title VII retaliation charges, which shows that individuals have not been discouraged from filing these charges.

Further, a review of court decisions shows that plaintiffs have continued to win age discrimination and title VII retaliation cases in the wake of the Supreme Court's decisions of Gross and Nassar.

Bottom line, we must ensure that before we continue to legislate on an issue that may not need additional Washington interference, we have accurate data.

My amendment simply states that before H.R. 2062 goes into effect, the Government Accountability Office must conduct a study and report to Congress on whether individuals have been discouraged from filing age discrimination or title VII retaliation charges and from filing lawsuits following the decisions in Gross and Nassar and whether there have been fewer plaintiffs winning age discrimination and title VII retaliation lawsuits.

If the GAO finds that individuals have not been discouraged from filing charges and lawsuits, and have, in fact, won more lawsuits than prior to the Supreme Court decisions, then the bill would not go into effect.

Let's not put the cart before the horse. I urge my colleagues to vote in favor of my amendment to ensure this legislation is actually needed and adequately addresses the purported concerns of the bill's sponsors.

Mr. SCOTT of Virginia. Mr. Speaker, I yield 4 minutes to the gentleman from New York (Mr. JONES), a distinguished member of the Committee on Education and Labor.

Mr. JONES. Mr. Speaker, I rise in opposition to my Republican colleague's amendment mandating a study before the bill can go into effect.

This is not an earnest attempt to look into the Supreme Court's impact on age discrimination cases. It is a delay tactic and nothing more.

We know that age discrimination happens. In fact, not long ago, we heard compelling witness testimony in the Education and Labor Committee highlighting the need for this very legislation.

Ageism is one of the most common and, sadly, most accepted forms of discrimination in the workplace. Last year, the EEOC received over 14,000 age discrimination complaints, accounting for over 20 percent of all discrimination charges filed in this country.

This is a problem that impacts not just workers but our entire economy, and it particularly harms women and people of color. According to the AARP, nearly two-thirds of women and more than three-quarters of Black workers age 45 and over say they have seen or experienced age discrimination in the workplace.

We don't need a study to tell us that a substantially higher burden of proof for some forms of discrimination makes it more difficult for workers who can prove discrimination to get their day in court and to prevail. That is just common sense.

What we need is a return to a mixed-motive standard, which says that any consideration of age, as opposed to ability to perform a job, is impermissible in employment decisions.

We can look at two cases that were proceeding under a mixed-motive standard but were dismissed following the Supreme Court's precedents. Courts dismissed both of these cases on the grounds that the facts, which were sufficient under a mixed-motive standard, were no longer sufficient under the heightened but-for standard.

First, there is the case of Jack Gross, an older gentleman who had been demoted after refusing a buyout when his employer underwent a merger. As he and many older workers were demoted,

his younger colleagues received promotions.

Mr. Gross challenged his demotion under the Age Discrimination in Employment Act and won his case at trial under the motivating factor framework. However, after the Supreme Court changed the rules and required him to retry his case under the new and more stringent but-for causation standard, he lost despite the fact that he had proved the same set of facts with the same parties in the same courts as before.

□ 1600

Second, consider the impact of the Nassar case on anti-retaliation claims under the Civil Rights Act. In the case of Shumate v. Selma City Board of Education, an elementary school cafeteria worker alleged that she had been passed over for promotion due to having filed earlier discrimination claims, and that those claims had been discussed by the interview panel.

The district court denied the employer's motion for summary judgment on her retaliation claim. However, the Nassar decision was issued a few months later and the employer moved for reconsideration under the new causation standard. This time, the district court dismissed the worker's retaliation claim and granted summary judgment to the employer, stating that, ''the Supreme Court has changed the rules since then.''

Same facts. Same case. Different causation standard, and a win was turned into a loss.

The Protecting Older Workers Against Discrimination Act reinstates the legal standard for proving age discrimination and aligns it with the existing standard for proving discrimination based on sex, race, or national origin.

Mr. Speaker, there is simply no excuse for discrimination of any kind in the workplace, and there is no reason to delay this legislation any further. We have already had a 12-year delay in restoring justice.

Mr. Speaker, I urge my colleagues to reject the Allen amendment and support the underlying bill.

Ms. FOXX. Mr. Speaker, may I inquire how much time I have remaining?

The SPEAKER pro tempore. The gentlewoman from North Carolina has 6½ minutes.

Ms. FOXX. Mr. Speaker, I yield 1 minute to the gentleman from Georgia (Mr. ALLEN).

Mr. ALLEN. Mr. Speaker, again, I simply state this: My amendment says that the Government Accountability Office must conduct a study and report to Congress on whether individuals have been discouraged from filing age discrimination or title VII retaliation charges and from filing lawsuits following the decisions in Gross and Nassar, and whether there have been fewer plaintiffs winning age discrimination and title VII retaliation lawsuits.

We must have the data before we move in this body. We do not have sufficient information at this point. Again, no one wants discrimination in the workplace, but we have a justice system that provides for relief for people who bring these cases. And I have just cited the cases presented here today.

Mr. Speaker, I urge a vote for this amendment so that we can get the proper data.

Mr. SCOTT of Virginia. Mr. Speaker, I yield 4 minutes to the gentlewoman from North Carolina, (Ms. MANNING), a distinguished member on the Committee of Education and Labor.

Ms. MANNING. Mr. Speaker, I rise in opposition to the Foxx amendment.

The amendment proposed by my colleague from North Carolina would weaken the essential civil rights protections that are the very purpose of the Protecting Older Workers Against Discrimination Act.

The goal of the bill we are voting on today is to treat workers who are discriminated against based on age, the very same way we treat workers who are discriminated against because of their race, gender, national origin, or religion.

In our world of rising costs, shrinking pensions and retirement savings, and longer life spans, many workers must work longer in order to be able to live out their retirement years in dignity. That, in addition to the reasons of basic fairness, is why the Protecting Older Workers Against Discrimination Act is so important.

This bill would apply the same burden of proof to age discrimination claims that are currently applied to other forms of employment discrimination and retaliation prohibited by the Civil Rights Act of 1964 and other statutes.

The Foxx amendment would weaken these protections by creating two different burdens of proof; one, for proving an act of discrimination, and a tougher burden of proving retaliation against a worker who has reported that discrimination.

The Foxx amendment would actually make it harder for an employee to secure relief from employer retaliation under the Civil Rights Act of 1964, as well as other civil rights statutes. In other words, an employer who retaliates against an older worker for reporting discrimination would have an easier time getting away with it.

If an employer has less risk of being held accountable for retaliating against an older worker who reports discrimination, by firing or otherwise penalizing the employee, then the underlying protections of the law are weakened because people will be deterred from reporting retaliatory acts.

H.R. 2062, the Protecting Older Workers Against Discrimination Act, clarifies the standard applied to age discrimination and retaliation—the mixed-motive standard—that was originally applied to claims under title VII of the Civil Rights Act prior to the Supreme Court's wrong-headed decisions in the 2009 Gross case. This is the same standard applied to discrimination claims under the Age Discrimination in Employment Act, the Americans with Disabilities Act, and the Rehabilitation Act.

It is important to note that the changes in language proposed by the Foxx amendment would have a particularly egregious effect because the enforcement of civil rights laws rely heavily on individuals to assert their rights. That is why every civil rights law makes it a separate act of discrimination for an employer to retaliate against employees for exercising their civil rights or opposing unlawful acts. Charges of retaliation are the most filed type of charge with the EEOC.

In 2020, more than half of the charges filed involved retaliation claims. Since so many workers who report discrimination also report retaliation, it is critical that H.R. 2062 correct the legal standard set by the 2013 case, University of Texas Southwestern Medical Center v. Nassar.

In that case, the Supreme Court applied the but-for standard to retaliation claims under title VII of the Civil Rights Act instead of the mixed-motive standard used for all other types of employment discrimination. It makes no sense to have separate provisions of title VII requiring different standards of causation.

The legislation before us today fixes the problem created by the Supreme Court rulings in the 2009 Gross decision and the 2013 Nassar decision by applying a mixed-motive standard to cases of age discrimination and retaliation.

The SPEAKER pro tempore. The time of the gentlewoman has expired.

Mr. SCOTT of Virginia. Mr. Speaker, I yield an additional 1 minute to the gentlewoman from North Carolina.

Ms. MANNING. The Protecting Older Workers Against Discrimination Act establishes the use of a mixed-motive standard, settling the confusing separation of related civil rights claims and strengthening workers' rights.

We should reject the Foxx amendment because prohibitions on retaliation do not punish employers multiple times for the same offense; rather, they help to deter employers from punishing employees multiple times—first, by discriminating and denying the equal opportunity, then again by punishing employees for challenging that discrimination.

Mr. Speaker, I urge a ''no'' vote on this amendment, and I urge a ''yes'' vote on the underlying bill, H.R. 2062.

Ms. FOXX. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I want to point out to my colleagues on the other side of the aisle that there was a higher percentage of Republicans who voted for the 1964 Civil Rights Act than Democrats, a higher percentage of Republicans voted for the ADEA, the Age Discrimination in Employment Act, and under

the ADA. It was President Bush who signed that bill.

So Republicans have a pretty good record on promoting and protecting the civil rights of Americans in this country, all Americans.

Mr. Speaker, for an employer to retaliate against an employee because that employee has previously made a discrimination complaint is wrong and it is already illegal.

H.R. 2062 reduces the standard of proof in retaliation cases by allowing mixed-motive claims, overturning the Supreme Court's 2013 decision in the Nassar case.

Allowing mixed-motive claims in retaliation cases is unworkable and contrary to the text, structure, and history of title VII, the Age Discrimination in Employment Act and the Americans with Disabilities Act.

Justice Anthony Kennedy wrote in the majority opinion in Nassar that in retaliation cases, ''lessening the causation standard could contribute to the filing of frivolous claims, which would siphon resources from efforts by employers, administrative agencies, and courts to combat workplace harassment.''

Justice Kennedy also wrote in his opinion that the concern about diverting resources was especially true because retaliation charges filed with the EEOC had nearly doubled in the past 15 years and had become the second most frequently filed category of complaint.

This concern is even more relevant today because retaliation is now the most frequently filed EEOC charge. All retaliation claims are inherently about differing explanations.

In these situations, the plaintiff has already made a discrimination complaint, and under the mixed-motive standard required under H.R. 2062, it will be a mere formality to plead that any subsequent negative action by the employer related to the employee was retaliatory.

Under H.R. 2062, a plaintiff claiming retaliation will always survive the summary judgment stage of the litigation and the case will either settle or go to trial. This will increase the number of frivolous claims against unsuspecting business owners and impose related financial costs noted in the Supreme Court decision, thus limiting important resources that could otherwise be used to combat discrimination.

Furthermore, there is no evidence to support the claim that employees have been harmed by the Nassar decision.

And, by the way, when employees win lawsuits claiming retaliation under the current standard, they can receive monetary damages, back pay, and reinstatement, as well as attorneys' fees and costs. Under H.R. 2062, this won't happen in nearly all of the cases. Only the trial lawyers will be paid.

Mr. Speaker, my amendment strikes the harmful, overly broad, and unworkable provision in H.R. 2062, which allows mixed-motive claims in retaliation cases.

The amendment protects the current standard of proof as described in the Nassar case, and I urge Members to support it.

Mr. Speaker, I reserve the balance of my time.

Mr. SCOTT of Virginia. Mr. Speaker, I yield myself the balance of my time.

Mr. Speaker, very briefly, the first amendment that requires the GAO study only seeks to say whether the cases went up or down. The cases can go up because there is more discrimination. It has nothing to do with whether or not it was because of the change in standard. It could be in spite of the standard. And all it does is delay the implementation of the bill.

The other sets a different standard for retaliation, where you can win your case that you didn't get promoted but lose your case on the fact that you got hired just because there is a differential standard. Well, that doesn't make much sense.

It seems to me that we should go back to the way it was before the Gross decision, have one standard in all of the discrimination cases, and have people be able to prove their case the way they have always been able to prove their case.

Mr. Speaker, I ask my colleagues to vote ''no'' on this amendments en bloc, and I yield back the balance of my time.

Ms. FOXX. Mr. Speaker, I urge my colleagues to vote ''yes'' on the amendments en bloc containing Representatives ALLEN's and FOXX's amendments, and I yield back the balance of my time.

The SPEAKER pro tempore (Mr. CARTER of Louisiana). Pursuant to House Resolution 486, the previous question is ordered on amendments en bloc No. 2 offered by the gentleman from Virginia (Mr. SCOTT).

The question is on the amendments en bloc.

The question was taken; and the Speaker pro tempore announced that the noes appear to have it.

Ms. FOXX. Mr. Speaker, on that I demand the yeas and nays.

The SPEAKER pro tempore. Pursuant to section 3(s) of House Resolution 8, the yeas and nays are ordered.

Pursuant to clause 8 of rule XX, further proceedings on this question are postponed.

□ 1615

AMENDMENT NO. 4 OFFERED BY MR. RODNEY DAVIS OF ILLINOIS

The SPEAKER pro tempore. It is now in order to consider amendment No. 4 printed in part B of House Report 117–71.

Mr. RODNEY DAVIS of Illinois. Mr. Speaker, I have an amendment at the desk.

The SPEAKER pro tempore. The Clerk will designate the amendment.

The text of the amendment is as follows:

At the end, add the following:

SEC. 5. STUDY AND REPORT TO CONGRESS.

Not later than 1 year after the date of the enactment of this Act, the Secretary of Labor and the Equal Employment Opportunity Commission shall jointly conduct a study to determine the number of claims pending or filed, in addition to cases closed, by women who may have been adversely impacted by age discrimination as a motivating factor in workplace discrimination or employment termination. The Secretary of Labor and Chairman of the Commission shall jointly submit to the Congress, and make available to the public, a report that contains the results of the study, including recommendations for best practices to prevent and to combat gender and age discrimination as it relates to women in the workplace.

The SPEAKER pro tempore. Pursuant to House Resolution 486, the gentleman from Illinois (Mr. RODNEY DAVIS) and a Member opposed each will control 5 minutes.

The Chair recognizes the gentleman from Illinois.

Mr. RODNEY DAVIS of Illinois. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I rise today in support of my bipartisan amendment to the Protecting Older Workers Against Discrimination Act, a bill that I am proud to be working on with my good friend, Chairman SCOTT.

Mr. Speaker, I yield such time as he may consume to the gentleman from Virginia (Mr. SCOTT).

Mr. SCOTT of Virginia. Mr. Speaker, I thank the gentleman from Illinois for his hard work on this amendment and on the bill itself. He has been a leader on helping older workers avoid discrimination.

This amendment offered by the gentleman from Illinois and cosponsored by the gentlewoman from Maine (Ms. PINGREE), would provide further information on how many women are adversely affected by age discrimination as a motivating factor in the workplace, as well as provide best practices to combat gender and age discrimination. These practices will help support older women who may face multiple kinds of discrimination.

Mr. Speaker, I thank my colleague for offering the amendment, and I also want to thank him for his distinguished leadership on the underlying legislation.

Mr. RODNEY DAVIS of Illinois. Mr. Speaker, I reclaim my time.

Mr. Speaker, this bill provides an important fix caused by the outcome of the 2019 Gross v. FBL Financial Services, Inc., Supreme Court decision in order to ensure that older workers can seek the justice they deserve when they face age discrimination in the workplace, on a level playing field.

The amendment that I introduced with Representative CHELLIE PINGREE highlights the discrimination that women face in the workplace based not only on gender, but on age as well.

According to a 2018 report from the EEOC, women, especially older women, but also those at middle age, were subjected to more age discrimination than older men. Research suggests that ageism at work begins at age 40 for women, 5 years earlier than men. This is unacceptable and we must find ways to correct this problem.

This amendment would require the DOL and EEOC to conduct a comprehensive study on these age discrimination cases. DOL and EEOC would then be required to make recommendations for best practices to combat age discrimination of women in the workplace.

Challenges that women face are not partisan issues and, together, we should make every effort to address them. Employers should make, and have the right tools to make, conscious efforts to ensure that women have equal rights and opportunities in the workplace, regardless of their age.

Mr. Speaker, I thank Representative PINGREE for co-leading this amendment, and also Chairman SCOTT for his kind words and support of its inclusion. I encourage my colleagues to support my amendment and to vote ''yes'' on this amendment and the underlying bill to protect older adults from workplace discrimination.

Mr. Speaker, I yield back the balance of my time.

The SPEAKER pro tempore. Pursuant to House Resolution 486, the previous question is ordered on the amendment offered by the gentleman from Illinois (Mr. RODNEY DAVIS).

The question is on the amendment.

The amendment was agreed to.

A motion to reconsider was laid on the table.

AMENDMENTS EN BLOC NO. 1 OFFERED BY MR. SCOTT OF VIRGINIA

The SPEAKER pro tempore. Pursuant to clause 8 of rule XX, the unfinished business is the question on the adoption of amendments en bloc No. 1, printed in part B of House Report 117–71, on which further proceedings were postponed and on which the yeas and nays were ordered.

The Clerk will redesignate the amendments en bloc.

The Clerk redesignated the amendments en bloc.

The SPEAKER pro tempore. The question is on the amendments en bloc offered by the gentleman from Virginia (Mr. SCOTT).

The vote was taken by electronic device, and there were—yeas 231, nays 192, not voting 7, as follows:

[Roll No. 178]

YEAS—231

Adams
Aguilar
Allred
Amodei
Auchincloss
Axne
Barragán
Bass
Beatty
Bera
Beyer
Bishop (GA)
Blumenauer
Blunt Rochester
Bonamici
Bost
Bourdeaux
Bowman
Boyle, Brendan F.
Brown
Brownley
Bush
Bustos
Butterfield
Carbajal
Cárdenas
Carson
Carter (LA)
Cartwright
Case
Casten
Castor (FL)
Castro (TX)
Chu
Cicilline
Clark (MA)
Clarke (NY)
Cleaver
Clyburn
Cohen
Connolly
Cooper
Correa
Courtney
Craig
Crist
Crow
Cuellar
Davids (KS)
Davis, Danny K.
Davis, Rodney
Dean
DeFazio
DeGette
DeLauro
DelBene
Delgado
Demings
DeSaulnier
Deutch
Dingell
Doggett
Doyle, Michael F.
Eshoo
Espaillat
Evans
Fitzpatrick
Fletcher
Foster
Frankel, Lois
Gallego
Garamendi
Garbarino
García (IL)
Garcia (TX)
Gimenez
Golden
Gomez
Gonzalez, Vicente
Gottheimer
Green, Al (TX)
Grijalva
Harder (CA)
Hayes
Higgins (NY)
Himes
Hinson
Horsford
Houlahan
Hoyer
Huffman
Jackson Lee
Jacobs (CA)
Jayapal
Jeffries
Johnson (GA)
Johnson (TX)
Jones
Kahele
Kaptur
Katko
Keating
Kelly (IL)
Khanna
Kildee
Kilmer
Kim (NJ)
Kind
Kinzinger
Kirkpatrick
Krishnamoorthi
Kuster
Lamb
Langevin
Larsen (WA)
Larson (CT)
Lawrence
Lawson (FL)
Lee (CA)
Lee (NV)
Leger Fernandez
Levin (CA)
Levin (MI)
Lieu
Lofgren
Lowenthal
Luria
Lynch
Malinowski
Maloney, Carolyn B.
Maloney, Sean
Manning
Mast
Matsui
McBath
McCollum
McEachin
McGovern
McNerney
Meeks
Meng
Mfume
Moore (WI)
Morelle
Moulton
Mrvan
Murphy (FL)
Nadler
Napolitano
Neal
Neguse
Newman
Norcross
O'Halleran
Ocasio-Cortez
Omar
Pallone
Panetta
Pappas
Pascrell
Payne
Perlmutter
Peters
Phillips
Pingree
Pocan
Porter
Pressley
Price (NC)
Quigley
Raskin
Rice (NY)
Ross
Roybal-Allard
Ruiz
Ruppersberger
Rush
Ryan
Salazar
Sánchez
Sarbanes
Scanlon
Schakowsky
Schiff
Schneider
Schrader
Schrier
Scott (VA)
Scott, David
Sewell
Sherman
Sherrill
Sires
Slotkin
Smith (NJ)
Smith (WA)
Soto
Spanberger
Speier
Stansbury
Stanton
Stevens
Strickland
Suozzi
Swalwell
Takano
Thompson (CA)
Thompson (MS)
Titus
Tlaib
Tonko
Torres (CA)
Torres (NY)
Trahan
Trone
Underwood
Upton
Van Drew
Vargas
Veasey
Vela
Velázquez
Wasserman Schultz
Waters
Watson Coleman
Welch
Wexton
Wild
Williams (GA)
Wilson (FL)
Yarmuth

NAYS—192

Aderholt
Allen
Armstrong
Arrington
Babin
Bacon
Baird
Balderson
Banks
Barr
Bentz
Bergman
Bice (OK)
Biggs
Bilirakis
Bishop (NC)
Boebert
Brady
Brooks
Buck
Bucshon
Budd
Burgess
Calvert
Cammack
Carl
Carter (GA)
Carter (TX)
Chabot
Cheney
Cline
Cloud
Clyde
Cole
Comer
Crawford
Crenshaw
Curtis
Davidson
DesJarlais
Diaz-Balart
Donalds
Duncan
Dunn
Emmer
Estes
Fallon
Feenstra
Ferguson
Fischbach
Fitzgerald
Fleischmann
Fortenberry
Foxx
Franklin, C. Scott
Gaetz
Gallagher
Garcia (CA)
Gibbs
Gohmert
Gonzales, Tony
Gonzalez (OH)
Good (VA)
Gooden (TX)
Gosar
Granger
Graves (LA)
Graves (MO)
Green (TN)
Greene (GA)
Griffith
Grothman
Guest
Guthrie
Hagedorn
Harris
Harshbarger
Hartzler
Hern
Herrell
Herrera Beutler
Hice (GA)
Higgins (LA)
Hill
Hollingsworth
Hudson
Huizenga
Issa
Jackson
Jacobs (NY)
Johnson (LA)
Johnson (OH)
Johnson (SD)
Jordan
Joyce (OH)
Joyce (PA)
Keller
Kelly (MS)
Kelly (PA)
Kim (CA)
Kustoff
LaHood
Lamborn
Latta
LaTurner
Lesko
Letlow
Long
Loudermilk
Lucas
Luetkemeyer
Mace
Malliotakis
Mann
Massie
McCarthy
McCaul
McClain
McClintock
McHenry
McKinley
Meijer
Meuser
Miller (IL)
Miller (WV)
Miller-Meeks
Moolenaar
Mooney
Moore (AL)
Moore (UT)
Mullin
Murphy (NC)
Nehls
Newhouse
Norman
Nunes
Obernolte
Owens
Palazzo
Palmer
Pence
Perry
Pfluger
Posey
Reed
Reschenthaler
Rice (SC)
Rodgers (WA)
Rogers (AL)
Rogers (KY)
Rose
Rosendale
Rouzer
Roy
Rutherford
Scalise
Schweikert
Scott, Austin
Sessions
Simpson
Smith (MO)
Smith (NE)
Smucker
Spartz
Stauber
Steel
Stefanik
Steil
Steube
Stewart
Taylor
Tenney
Thompson (PA)
Tiffany
Timmons
Turner
Valadao
Van Duyne
Wagner
Walberg
Walorski
Waltz
Weber (TX)
Webster (FL)
Wenstrup
Westerman
Williams (TX)
Wilson (SC)
Wittman
Womack
Young
Zeldin

NOT VOTING—7

Buchanan
Burchett
Cawthorn
Costa
Escobar
Fulcher
LaMalfa

□ 1648

Mr. SMITH of Nebraska changed his vote from ''yea'' to ''nay.''

Mrs. HINSON changed her vote from ''nay'' to ''yea.''

So the en bloc amendments were agreed to.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

MEMBERS RECORDED PURSUANT TO HOUSE RESOLUTION 8, 117TH CONGRESS

Aderholt (Moolenaar)
Amodei (Balderson)
DeFazio (Davids (KS))
DeSaulnier (Matsui)
García (IL) (Garcia (TX))
Hoyer (Brown)
Johnson (TX) (Jeffries)
Kelly (IL) (Jeffries)
Kirkpatrick (Stanton)
Lawson (FL) (Evans)
Lieu (Beyer)
Lowenthal (Beyer)
Meng (Clark (MA))
Mullin (Cole)
Napolitano (Correa)
Pappas (Kuster)
Payne (Pallone)
Ruiz (Aguilar)
Rush (Underwood)
Sewell (DelBene)
Torres (NY) (Clark (MA))
Vela (Gomez)
Velázquez (Jeffries)
Waters (Takano)
Wilson (FL) (Hayes)

AMENDMENTS EN BLOC NO. 2 OFFERED BY MR. SCOTT OF VIRGINIA

The SPEAKER pro tempore. Pursuant to clause 8 of rule XX, the unfinished business is the question on the adoption of amendments en bloc No. 2, printed in part B of House Report 117–71, on which further proceedings were postponed and on which the yeas and nays were ordered.

The Clerk will redesignate the amendments en bloc.

The Clerk redesignated the amendments en bloc.

The SPEAKER pro tempore. The question is on the amendments en bloc offered by the gentleman from Virginia (Mr. SCOTT).

The vote was taken by electronic device, and there were—yeas 182, nays 243, not voting 5, as follows:

[Roll No. 179]

YEAS—182

Aderholt
Allen
Armstrong
Arrington
Babin
Baird
Balderson
Banks
Barr
Bentz
Bergman
Bice (OK)
Biggs
Bilirakis
Bishop (NC)
Boebert
Brady
Brooks
Buck
Bucshon
Budd

Burgess
Calvert
Cammack
Carl
Carter (GA)
Carter (TX)
Cawthorn
Chabot
Cheney
Cline
Cloud
Clyde
Cole
Comer
Crawford
Crenshaw
Davidson
DesJarlais
Diaz-Balart
Donalds
Duncan
Dunn
Emmer
Estes
Fallon
Feenstra
Ferguson
Fischbach
Fitzgerald
Fleischmann
Foxx
Franklin, C. Scott
Gallagher
Garcia (CA)
Gibbs
Gimenez
Gohmert
Gonzales, Tony
Gonzalez (OH)
Good (VA)
Gooden (TX)
Gosar
Granger
Graves (LA)
Graves (MO)
Green (TN)
Greene (GA)
Griffith
Guest
Guthrie
Hagedorn
Harris
Harshbarger
Hartzler
Hern
Herrell
Hice (GA)
Higgins (LA)
Hill
Hudson
Huizenga
Issa
Jackson
Jacobs (NY)
Johnson (LA)
Johnson (OH)
Johnson (SD)
Jordan
Joyce (PA)
Keller
Kelly (MS)
Kelly (PA)
Kustoff
LaHood
LaMalfa
Lamborn
Latta
LaTurner
Lesko
Letlow
Long
Loudermilk
Lucas
Luetkemeyer
Mace
Malliotakis
Mann
Massie
Mast
McCarthy
McCaul
McClain
McClintock
McHenry
McKinley
Meijer
Meuser
Miller (IL)
Miller (WV)
Miller-Meeks
Moolenaar
Mooney
Moore (AL)
Moore (UT)
Mullin
Murphy (NC)
Nehls
Newhouse
Norman
Nunes
Obernolte
Owens
Palazzo
Palmer
Pence
Perry
Pfluger
Posey
Reschenthaler
Rice (SC)
Rodgers (WA)
Rogers (KY)
Rose
Rosendale
Rouzer
Rutherford
Salazar
Scalise
Schweikert
Scott, Austin
Sessions
Simpson
Smith (MO)
Smith (NE)
Smucker
Spartz
Steel
Stefanik
Steil
Steube
Stewart
Taylor
Tenney
Thompson (PA)
Tiffany
Timmons
Turner
Valadao
Van Duyne
Walberg
Walorski
Waltz
Weber (TX)
Webster (FL)
Wenstrup
Westerman
Williams (TX)
Wilson (SC)
Wittman
Womack
Zeldin

NAYS—243

Adams
Aguilar
Allred
Amodei
Auchincloss
Axne
Bacon
Barragán
Bass
Beatty
Bera
Beyer
Bishop (GA)
Blumenauer
Blunt Rochester
Bonamici
Bost
Bourdeaux
Bowman
Boyle, Brendan F.
Brown
Brownley
Bush
Bustos
Butterfield
Carbajal
Cárdenas
Carson
Carter (LA)
Cartwright
Case
Casten
Castor (FL)
Castro (TX)
Chu
Cicilline
Clark (MA)
Clarke (NY)
Cleaver
Clyburn
Cohen
Connolly
Cooper
Correa
Costa
Courtney
Craig
Crist
Crow
Cuellar
Davids (KS)
Davis, Danny K.
Davis, Rodney
Dean
DeFazio
DeGette
DeLauro
DelBene
Delgado
Demings
DeSaulnier
Deutch
Dingell
Doggett
Doyle, Michael F.
Escobar
Eshoo
Espaillat
Evans
Fitzpatrick
Fletcher
Fortenberry
Foster
Frankel, Lois
Gaetz
Gallego
Garamendi
García (IL)
Garcia (TX)
Golden
Gomez
Gonzalez, Vicente
Gottheimer
Green, Al (TX)
Grijalva
Grothman
Harder (CA)
Hayes
Herrera Beutler
Higgins (NY)
Himes
Hinson
Hollingsworth
Horsford
Houlahan
Hoyer
Huffman
Jackson Lee
Jacobs (CA)
Jayapal
Jeffries
Johnson (GA)
Johnson (TX)
Jones
Joyce (OH)
Kahele
Kaptur
Katko
Keating
Kelly (IL)
Khanna
Kildee
Kilmer
Kim (CA)
Kim (NJ)
Kind
Kinzinger
Kirkpatrick
Krishnamoorthi
Kuster
Lamb
Langevin
Larsen (WA)
Larson (CT)
Lawrence
Lawson (FL)
Lee (CA)
Lee (NV)
Leger Fernandez
Levin (CA)
Levin (MI)
Lieu
Lofgren
Lowenthal
Luria
Lynch
Malinowski
Maloney, Carolyn B.
Maloney, Sean
Manning
Matsui
McBath
McCollum
McEachin
McGovern
McNerney
Meeks
Meng
Mfume
Moore (WI)
Morelle
Moulton
Mrvan
Murphy (FL)
Nadler
Napolitano
Neal
Neguse
Newman
Norcross
O'Halleran
Ocasio-Cortez
Omar
Pallone
Panetta
Pappas
Pascrell
Payne
Perlmutter
Peters
Phillips
Pingree
Pocan
Porter
Pressley
Price (NC)
Quigley
Raskin
Reed
Rice (NY)
Rogers (AL)
Ross
Roy
Roybal-Allard
Ruiz
Ruppersberger
Rush
Ryan
Sánchez
Sarbanes
Scanlon
Schakowsky
Schiff
Schneider
Schrader
Schrier
Scott (VA)
Scott, David
Sewell
Sherman
Sherrill
Sires
Slotkin
Smith (NJ)
Smith (WA)
Soto
Spanberger
Speier
Stansbury
Stanton
Stauber
Stevens
Strickland
Suozzi
Swalwell
Takano
Thompson (CA)
Thompson (MS)
Titus
Tlaib
Tonko
Torres (CA)
Torres (NY)
Trahan
Trone
Underwood
Upton
Van Drew
Vargas
Veasey
Vela
Velázquez
Wagner
Wasserman Schultz
Waters
Watson Coleman
Welch
Wexton
Wild
Williams (GA)
Wilson (FL)
Yarmuth
Young

NOT VOTING—5

Buchanan
Burchett
Curtis
Fulcher
Garbarino

□ 1710

Mr. MEEKS, Mses. CRAIG, WASSERMAN SCHULTZ, ESHOO, and Mr. BUTTERFIELD changed their vote from ''yea'' to ''nay.''

Messrs. LaMALFA, LAMBORN, and Ms. CHENEY changed their vote from ''nay'' to ''yea.''

So the en bloc amendments were rejected.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

MEMBERS RECORDED PURSUANT TO HOUSE RESOLUTION 8, 117TH CONGRESS

Aderholt (Moolenaar)
Amodei (Balderson)
DeFazio (Davids (KS))
DeSaulnier (Matsui)
García (IL) (García (TX))
Hoyer (Brown)
Johnson (TX) (Jeffries)
Kelly (IL) (Jeffries)
Kirkpatrick (Stanton)
Lawson (FL) (Evans)
Lieu (Beyer)
Lowenthal (Beyer)
Meng (Clark (MA))
Mullin (Cole)
Napolitano (Correa)
Pappas (Kuster)
Payne (Pallone)
Ruiz (Aguilar)
Rush (Underwood)
Sewell (DelBene)
Torres (NY) (Clark (MA))
Vela (Gomez)
Velázquez (Jeffries)
Waters (Takano)
Wilson (FL) (Hayes)

The SPEAKER pro tempore. The previous question is ordered on the bill, as amended.

The question is on the engrossment and third reading of the bill.

The bill was ordered to be engrossed and read a third time, and was read the third time.

The SPEAKER pro tempore. The question is on the passage of the bill.

The question was taken; and the Speaker pro tempore announced that the ayes appeared to have it.

Mr. WALBERG. Mr. Speaker, on that I demand the yeas and nays.

The SPEAKER pro tempore. Pursuant to section 3(s) of House Resolution 8, the yeas and nays are ordered.

The vote was taken by electronic device, and there were—yeas 247, nays 178, not voting 5, as follows:

[Roll No. 180]

YEAS—247

Adams
Aguilar
Allred
Auchincloss
Axne
Bacon
Balderson
Barragán
Bass
Beatty
Bera
Beyer
Bilirakis
Bishop (GA)
Blumenauer
Blunt Rochester
Bonamici
Bost
Bourdeaux
Bowman
Boyle, Brendan F.
Brown
Brownley
Bush
Bustos
Butterfield
Carbajal
Cárdenas
Carson
Carter (LA)
Cartwright
Case
Casten
Castro (TX)
Chu
Cicilline
Clark (MA)
Clarke (NY)
Cleaver
Clyburn
Cohen
Connolly
Cooper
Correa
Costa
Courtney
Craig
Crist
Crow
Cuellar
Davids (KS)
Davis, Danny K.
Dean
DeFazio
DeGette
DeLauro
DelBene
Delgado
Demings
DeSaulnier
Deutch
Diaz-Balart
Dingell
Doggett
Doyle, Michael F.
Escobar
Eshoo
Espaillat
Evans
Fitzpatrick
Fletcher
Fortenberry
Foster
Frankel, Lois
Gallego
Garamendi
Garbarino
García (IL)
Garcia (TX)
Gimenez
Golden
Gomez
Gonzales, Tony
Gonzalez, Vicente
Gottheimer
Green, Al (TX)
Grijalva
Grothman
Harder (CA)
Hayes
Herrera Beutler
Higgins (NY)
Himes
Hinson
Hollingsworth
Horsford
Houlahan
Hoyer
Huffman
Jackson Lee
Jacobs (CA)
Jayapal
Jeffries
Johnson (GA)
Johnson (TX)
Jones
Joyce (OH)
Kahele
Kaptur
Katko
Keating
Kelly (IL)
Khanna
Kildee
Kilmer
Kim (CA)
Kim (NJ)
Kind
Kinzinger
Kirkpatrick
Krishnamoorthi
Kuster
Lamb
Langevin
Larsen (WA)
Larson (CT)
Lawrence
Lawson (FL)
Lee (CA)
Lee (NV)
Leger Fernandez
Levin (CA)
Levin (MI)
Lieu
Lofgren
Lowenthal
Luria
Lynch
Malinowski
Maloney, Carolyn B.
Maloney, Sean
Manning
Mast
Matsui
McBath
McCaul
McCollum
McEachin
McGovern
McNerney
Meeks
Meng
Mfume
Moore (WI)
Morelle
Moulton
Mrvan
Murphy (FL)
Nadler
Napolitano
Neal
Neguse
Newman
Norcross
O'Halleran
Ocasio-Cortez
Omar
Pallone
Panetta
Pappas
Pascrell
Payne
Perlmutter
Peters
Phillips
Pingree
Pocan
Porter
Pressley
Price (NC)
Quigley
Raskin
Reed
Rice (NY)
Ross
Roybal-Allard
Ruiz
Ruppersberger
Rush
Ryan
Salazar
Sánchez
Sarbanes
Scanlon
Schakowsky
Schiff
Schneider
Schrader
Schrier
Scott (VA)
Scott, David
Sewell
Sherman
Sherrill
Sires
Slotkin
Smith (NJ)
Smith (WA)
Soto
Spanberger
Speier
Stansbury
Stanton
Stauber
Stevens
Strickland
Suozzi
Swalwell
Takano
Thompson (CA)
Thompson (MS)
Titus
Tlaib
Tonko
Torres (CA)
Torres (NY)
Trahan
Trone
Turner
Underwood
Upton
Van Drew
Vargas
Veasey
Vela
Velázquez
Wagner
Wasserman Schultz
Waters
Watson Coleman
Welch
Wexton
Wild
Williams (GA)
Wilson (FL)
Yarmuth
Young

NAYS—178

Aderholt
Allen
Amodei
Armstrong
Arrington
Babin

Baird
Banks
Barr
Bentz
Bergman
Bice (OK)
Biggs
Bishop (NC)
Boebert
Brady
Brooks
Buck
Bucshon
Budd
Burgess
Calvert
Cammack
Carl
Carter (GA)
Carter (TX)
Cawthorn
Chabot
Cheney
Cline
Cloud
Clyde
Cole
Comer
Crawford
Crenshaw
Curtis
Davidson
Davis, Rodney
DesJarlais
Donalds
Duncan
Dunn
Emmer
Estes
Fallon
Feenstra
Ferguson
Fischbach
Fitzgerald
Fleischmann
Foxx
Franklin, C. Scott
Gaetz
Gallagher
Garcia (CA)
Gibbs
Gohmert
Gonzalez (OH)
Good (VA)
Gooden (TX)
Gosar
Granger
Graves (LA)
Graves (MO)
Green (TN)
Greene (GA)
Griffith
Guest
Guthrie
Hagedorn
Harris
Harshbarger
Hartzler
Hern
Herrell
Hice (GA)
Higgins (LA)
Hill
Hudson
Huizenga
Issa
Jackson
Jacobs (NY)
Johnson (LA)
Johnson (OH)
Johnson (SD)
Jordan
Joyce (PA)
Keller
Kelly (MS)
Kelly (PA)
Kustoff
LaHood
LaMalfa
Lamborn
Latta
LaTurner
Lesko
Letlow
Long
Loudermilk
Lucas
Luetkemeyer
Mace
Malliotakis
Mann
Massie
McCarthy
McClain
McClintock
McHenry
McKinley
Meijer
Meuser
Miller (IL)
Miller (WV)
Miller-Meeks
Moolenaar
Mooney
Moore (AL)
Moore (UT)
Mullin
Murphy (NC)
Nehls
Newhouse
Norman
Nunes
Obernolte
Owens
Palazzo
Palmer
Perry
Pfluger
Posey
Reschenthaler
Rice (SC)
Rodgers (WA)
Rogers (AL)
Rogers (KY)
Rose
Rosendale
Rouzer
Roy
Rutherford
Scalise
Schweikert
Scott, Austin
Sessions
Simpson
Smith (MO)
Smith (NE)
Smucker
Spartz
Steel
Stefanik
Steil
Steube
Stewart
Taylor
Tenney
Thompson (PA)
Tiffany
Timmons
Valadao
Van Duyne
Walberg
Walorski
Waltz
Weber (TX)
Webster (FL)
Wenstrup
Westerman
Williams (TX)
Wilson (SC)
Wittman
Womack
Zeldin

NOT VOTING—5

Buchanan
Burchett
Castor (FL)
Fulcher
Pence

□ 1732

So the bill was passed.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

MEMBERS RECORDED PURSUANT TO HOUSE RESOLUTION 8, 117TH CONGRESS

Aderholt (Moolenaar)
Amodei (Balderson)
DeFazio (Davids (KS))
DeSaulnier (Matsui)
García (IL) (Garcia (TX))
Hoyer (Brown)
Johnson (TX) (Jeffries)
Kelly (IL) (Jeffries)
Kirkpatrick (Stanton)
Lawson (FL) (Evans)
Lieu (Beyer)
Lowenthal (Beyer)
Meng (Clark (MA))
Mullin (Cole)
Napolitano (Correa)
Pappas (Kuster)
Payne (Pallone)
Ruiz (Aguilar)
Rush (Underwood)
Sewell (DelBene)
Torres (NY) (Clark (MA))
Vela (Gomez)
Velázquez (Jeffries)
Waters (Takano)
Wilson (FL) (Hayes)

REMOVAL OF NAME OF MEMBER AS COSPONSOR OF H.R. 3093

Mr. CORREA. Mr. Speaker, I seek to be removed as a cosponsor of H.R. 3093.

The SPEAKER pro tempore. The gentleman's request is accepted.

CONGRATULATING MICHAEL PAUL WILLIAMS ON WINNING PULITZER PRIZE

(Mr. MCEACHIN asked and was given permission to address the House for 1 minute.)

Mr. MCEACHIN. Mr. Speaker, I rise today in recognition of Michael Paul Williams, a columnist from the Richmond Times-Dispatch, the primary newspaper of record for the Commonwealth, which is located in my district.

Mr. Williams was recently awarded the Pulitzer Prize for Commentary. He is the first Pulitzer Prize recipient at the Times-Dispatch since 1948.

Throughout his nearly 40-year career, he has been a dedicated and effective journalist who has focused much of his work on issues of race and racial inequality in Virginia.

The first commentator of color at the Times-Dispatch, he has provided unique, insightful, and impactful commentary that has sparked public discourse, helped shape narratives and understandings of race in Virginia, and challenged readers to consider the inequities that communities of color face.

It is with great honor that I congratulate Michael Paul Williams for his award-winning commentary on the issues impacting our communities in Richmond.

RECOGNIZING RELIGIOUS FREEDOM WEEK

(Mr. THOMPSON of Pennsylvania asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. THOMPSON of Pennsylvania. Mr. Speaker, I rise to recognize Religious Freedom Week. Religious Freedom Week began on Monday and runs through June 29.

Freedom of religion is a fundamental human right. Our Founding Fathers made sure it would always be protected. The First Amendment protects freedom of religion along with the freedom of speech and the freedom of the press.

This assurance of freedom gives us all the opportunity to openly practice and speak our beliefs. It allows me to speak on the House floor right now.

The United States is a place where all faiths can be peacefully practiced free from the fear of persecution.

The very foundation of our Nation, a place of freedom and liberty for all, was conceived by individuals in search of religious freedom.

Mr. Speaker, the United States of America will always be a beacon of light in the world, and we will always protect our fundamental, unified commitment of religious freedom because no person should live in fear for their beliefs.

FRIVOLOUS LAWSUITS BLOCK FOREST CLEANUPS

(Mr. LAMALFA asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. LAMALFA. Mr. Speaker, access to our public lands is being cut off by road closures throughout the national forests in Region 5. The U.S. Forest Service is citing public safety concerns due to hazardous trees from past fire seasons.

But this blocks the public from accessing the public lands, and it also prevents those roads being used as evacuation routes or access points to fight fires in coming seasons.

One road that has been closed, the Greyback Road in the Rogue River-Siskiyou National Forest in northern California, is a California Office of Emergency Services designated evacuation route for the town of Happy Camp, California. If Highway 96 is blocked, this is the only other way out of Happy Camp.

Litigation is preventing the U.S. Forest Service from working with private-sector partners to clean up the forests. For example, in the Mendocino National Forest, 300,000 acres burned in 2018. The Forest Service wanted to do 4,700 acres, a tiny 2 percent of that, yet it was blocked by a lawsuit from doing that cleanup work.

Without offering the salvage timber sale, that means it is going to cost taxpayers $5.5 million instead of being able to recover some of the money.

This litigation harms the public by leaving hazardous trees and snags out in the forest, which create safety issues and become fuel for the next fire season.

We must reform NEPA and ESA.

HONORING FORMER CONGRESSMAN PAUL MITCHELL

The SPEAKER pro tempore. Under the Speaker's announced policy of January 4, 2021, the gentlewoman from Michigan (Ms. SLOTKIN) is recognized for 60 minutes as the designee of the majority leader.

Ms. SLOTKIN. Mr. Speaker, I am proud to join several of my colleagues tonight to recognize our former colleague, Mr. Paul Mitchell.

Paul was recently diagnosed with cancer, and so many of us wanted to send our well-wishes that we decided the best way we could do it was from the well of the House, a place that Paul Mitchell loved and spent so much of his time.

Paul represented Michigan's 10th District in our State's thumb from 2017 until his retirement just this year. In that time, he proved himself to be the kind of principled, practical leader that Michigan is known for.

Paul knew that the path to good government runs through reaching across the aisle. The proof is in his record. Paul was intentional about ensuring key legislation be introduced in a bipartisan fashion, and the folks he drew to his legislation ran the gamut of the political spectrum.

Paul was an advocate for students, for investing in innovation, and for